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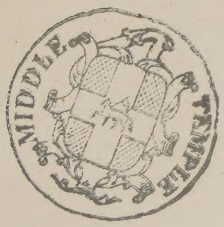
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CONVEYANCING.

FOURTH EDITION.

Vol. IV.

MORTMAIN—POWERS OF ATTORNEY.

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BYTHEWOOD & JARMAN'S

SYSTEM OF CONVEYANCING.

A SELECTION OF

PRECEDENTS IN CONVEYANCING

TAKEN FROM MODERN MANUSCRIPT COLLECTIONS AND DRAFTS OF ACTUAL PRACTICE;

WITH

Dissertations and Practical Notes:

BY THE LATE

W. M. BYTHEWOOD, THOMAS JARMAN, & GEORGE SWEET,

BARRISTERS-AT LAW.

Fourth Edition,

BY

LEOPOLD GEORGE GORDON ROBBINS,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

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PREFACE

TO THE

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The Editor desires to take this opportunity of repeating his acknowledgments to Mr. Ralph Thicknesse and Mr. A. Turnour Murray, both of Lincoln's Inn, for valuable assistance, and also to other members of both branches of the legal profession for advice and suggestions, and loans of drafts and manuscript forms of deeds and other instruments.

The Dissertation on "Powers of Attorney" and most of the following Precedents were originally prepared in 1861 by Mr. Whitley Stokes, of the Inner Temple, and have been here inserted with such alterations and additions as seemed necessary.

L. G. GORDON ROBBINS.

4, Stone Buildings, Lincoln's Inn,
31 *December*, 1886.

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51 & 52 Vict. c. 42. Mortmain and Charitable Uses Act, 1888.

ADDENDA ET CORRIGENDA.

Page 24, last line but seven. *Gift to Charity—Interest in Land—Tolls.*—The decision in *Re Christmas, Martin* v. *Lacon*, has been reversed by the Court of Appeal: S. C. 33 Ch. D. 332.

,, 26, marginal note. *For* "Appointment," *substitute* "Apportionment."

,, 38, line 28. *After* "*Re Clark's Trust*, 1 Ch. D. 497," *add* "*Biscoe* v. *Jackson*, 35 W. R."

,, 38, line 37. *After* "*Re Ovey, Broadbent* v. *Barrow*, 29 Ch. D. 560," *add*, "*White's Trusts*, 33 Ch. D. 449."

,, 45, line 1. *Charity—Friendly Society.*—The case of *Re Clark's Trust*, 1 Ch. D. 497 was cited in the case of *Pease* v. *Pattinson*, 33 Ch. D. 154, when *Bacon*, V.-C., stated that the ground of decision in the former case was that there the gift was to a particular society, which afterwards ceased to exist, and he decided that a friendly society might be a charity: see *Spiller* v. *Maude*, *ibid.*, 158, n.

,, 49, line 32. *Charitable Gift—Repair of Churchyard.*—Though a gift for the repair of a particular tomb in a churchyard is bad; a gift for keeping in repair the churchyard generally is good: *Re Vaughan, Vaughan* v. *Thomas*, 33 Ch. D. 187.

,, 59, last line. *For* "17 & 18 Vict. c. 137," *substitute* "16 & 17 Vict. c. 137."

,, 202, line 9. *After* "*Woods* v. *Lamb*, 33 L. T. 309," *add* "See also *Neilson* v. *Mossend Iron Co.*, 11 App. Ca. 298."

,, 217, line 5. *Loan to Trader—Bovill's Act—Substituted Agreement—Foreclosure.*—Where a loan to a trader was originally made on the terms that the lender should receive a share of the profits in lieu of interest, and subsequently this agreement was cancelled, and another agreement was substituted that the lender should receive interest on the loan at a fixed rate; it was held that the lender's claim was within the mischief of sect. 5 of the stat. 28 & 29 Vict. c. 86, and must accordingly be postponed to the claims of other creditors of the trader on his bankruptcy: *Re Stone*, 33 Ch. D. 541. As to foreclosure, where the repayment of a loan with interest at a rate varying with profits is secured by mortgage, see *Badeley* v. *Consolidated Bank*, 35 W. R. 106.

,, 285, line 26. *For* "2 My. & R. 125," *substitute* "2 My. & K. 125."

,, 317, line 1. *After* "Agreement," *add* "See also *Vernon* v. *Hallam* 35 W. R. 156."

,, 328, note (*g*). *Company—Adoption of Contract.*—The decision in the case of *Re Northumberland Avenue Hotel Co.*, has been affirmed by the Court of Appeal: S. C., 33 Ch. D. 16.

Page 526, note (*k*). *Add at end of note* "See also *Miles* v. *New Zealand Alford Estate Co.*, 32 Ch. D. 266; *Bradford Banking Co.* v. *Briggs & Co.*, W. N. 1886, p. 194."

,, 677, note (*h*). *Copyright—"Book"—Photographic Album.*—An album for holding photographs with pictorial borders on each page representing views of castles, &c., with a few descriptive lines appended to each view, has been held not to be a "book" within the meaning of the stat. 5 & 6 Vict. c. 45: *Schove* v. *Schmincke*, 33 Ch. D. 546.

,, 700, line 32. *Add* "The time of publication to be entered on the register is the time of the first publication of the *first* edition of the book: *Thomas* v. *Turner*, 33 Ch. D. 292."

,, 880, line 9. *After* "*Danby* v. *Coutts*, W. N. 1885, p. 46," *add* "*Lewis* v. *Ramsdale*, W. N. 1886, p. 118; S. C. 55 L. T. 179; 35 W. R. 8."

Jarman and Bythewood's

PRECEDENTS IN CONVEYANCING

MORTMAIN (*a*).

PRELIMINARY DISSERTATION.

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(*a*) It has been thought well to insert in this place under the above heading a separate dissertation on the subject of gifts for charitable and public purposes. A portion of the text of this dissertation has been taken from the remarks of Mr. Jarman in the last edition of this work under the heading of "WILLS," at pp. 137, *et seq.* The greater number of points decided with regard to charitable gifts have arisen in cases of gifts by will, probably because professional advice and assistance is more frequently dispensed with in the case of wills than in the case of deeds; and also, perhaps, because donors are sometimes more disposed to be charitable at the expense of those who will take after them, than at the expense of themselves.

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See now 51 & 52 Vict. c. 42.

1. The Mortmain Act and the Formalities required by it.

Requirements of Mortmain Act.

What questions arise.

The greatest number of questions as to charitable uses arise upon the application of the statute 9 Geo. 2, c. 36, commonly, though erroneously, called the Mortmain Act. By it gifts to charitable uses are restricted and regulated.

This Act enacts as follows:—

No lands, &c., to be given for charitable uses, unless by deed twelve months before death of donor, &c.

"That from and after the 24th day of June, which shall be in the year of our Lord 1736, no manors, lands, tenements, rents, advowsons or other hereditaments, corporeal or incorporeal whatsoever, nor any sum or sums of money, goods, chattels, stocks in the public funds, securities for money, or any other personal estate whatsoever, to be laid out or disposed of in the purchase of any lands, tenements, or hereditaments, shall be given, granted, aliened, limited, released, transferred, assigned, or appointed, or anyways conveyed or settled to or upon any person or persons, bodies politic or corporate, or otherwise for any estate or interest whatsoever, or any ways charged or incumbered by any person or persons whatsoever, in trust, or for the benefit of any charitable uses whatsoever, unless such gift, conveyance, appointment or settlement of any such lands, tenements, or hereditaments, sum or sums of money, or personal estate (other than stocks in the public funds), be and be made by deed indented, sealed, and

delivered in the presence of two or more credible witnesses, twelve calendar months at least before the death of such donor or grantor (including the days of execution and death), and be enrolled in His Majesty's High Court of Chancery within six calendar months next after the execution thereof, and unless such stocks be transferred in the public books usually kept for the transfer of stocks, six calendar months at least before the death of such donor or grantor (including the days of the transfer and death), and unless the same be made to take effect in possession for the charitable use intended immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, limitation, clause or agreement whatsoever, for the benefit of the donor or grantor, or of any person or persons claiming under him." **Requirements of Mortmain Act.**

Sect. 2. "Provided always, that nothing hereinbefore mentioned relating to the sealing and delivering of any deed or deeds twelve calendar months at least before the death of the grantor, or to the transfer of any stock six calendar months before the death of the grantor or person making such transfer, shall extend or be construed to extend to any purchase of any estate or interest in lands, tenements, or hereditaments, or any transfer of any stock to be made really and *bonâ fide* for a full and valuable consideration actually paid at or before the making such conveyance or transfer, without fraud or collusion." The said limitation not to extend to purchases or transfers made for valuable considerations.

Sect. 3. "That all gifts, grants, conveyances, appointments, assurances, transfers and settlements whatsoever, of any lands, tenements, or other hereditaments, affecting, or of any estate or interest therein, or of any charge or incumbrance affecting or to affect any lands, tenements, or hereditaments, or of any stock, money, goods, chattels, or other personal estate, or securities for money to be laid out or disposed of in the purchase of any lands, tenements, or hereditaments, or of any estate or interest therein, or of any charge or incumbrance, affecting or to affect the same, to or in trust for any charitable uses whatsoever, which shall at any time from and after the said 24th day of June, 1736, be made in any other manner or form than by this Act is directed and appointed, shall be absolutely and to all intents and purposes null and void." Gifts, &c., made otherwise absolutely void.

Sect. 4. "Provided always, that this Act shall not extend, or be construed to extend, to make void the dispositions of any lands, tenements, or hereditaments, or of any personal estate to be laid out in the purchase of any lands, tenements, or hereditaments, which shall be made in any other manner or form than by this Act is directed, to or in trust for either of the two Universities within that part of Great Britain called England, or any of the Savings for the two Universities, Eton, Winchester, and Westminster.

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colleges or houses of learning within either of the said Universities, or to or in trust for the colleges of Eton, Winchester, or Westminster, or any or either of them, for the better support and maintenance of the scholars only upon the foundations of the said colleges of Eton, Winchester, and Westminster."

No college to hold more advowsons than shall be equal to one moiety of their fellows, &c. (*a*).

Sect. 5. "Provided nevertheless, that no college or house of learning which doth or shall hold or enjoy so many advowsons of ecclesiastical benefices as are or shall be equal in number to one moiety of the fellows or persons usually styled or reputed as fellows, or, where there are or shall be no fellows, or persons usually styled or reputed as fellows, to one moiety of the students upon the foundation, whereof any such college or house of learning doth or may by the present constitution of such college or house of learning consist, shall from and after the 24th day of June, 1736, be capable of purchasing, acquiring, receiving, taking, holding or enjoying any other advowsons of ecclesiastical benefices by any means whatsoever; the advowsons of such ecclesiastical benefices as are annexed to, or given for the benefit or better support of the headships of any of the said colleges or houses of learning, not being computed in the number of advowsons hereby limited."

This Act not to extend to estates in Scotland.

Sect. 6. "Provided always, that nothing in this Act contained shall extend, or shall be construed to extend, to the disposition, grant, or settlement of any estate, real or personal, lying or being within that part of Great Britain called Scotland."

Formal requirements of Act.

The first requirement of the Act is that a gift to charitable uses should be by deed indented; but the stat. 24 Vict. c. 9, enacts that after the passing thereof, *i.e.*, the 17th of May, 1861, no deed or assurance for charitable uses of hereditaments, or of any estate or interest therein, is to be deemed void by reason of its not being indented, or not purporting to be indented: see *infra*, p. 9.

Indenture.

Repealed, 51 & 52 Vict. c. 42.

Execution and attestation.

In order to satisfy the requirements of the Act as regards execution and attestation (*b*), both wit-

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(*a*) This section is repealed as regards colleges, &c., in the Universities of Oxford and Cambridge by the stat. 45 Geo. 3, c. 101.

Appointment to charity under power.

(*b*) Provided that the statutory requirements as to execution and attestation are duly observed, an appointment under a power in favour of a charity will apparently be good, although the deed may not be executed or attested in the manner prescribed in the power: see *Att.-Gen.* v. *Rye*, 2 Vern. 453; *Att.-Gen.* v. *Burdet*, *ibid.* 755; *Sayer* v. *Sayer*, 3 Mac. & G. 606; and see Sugd. Powers, 208.

nesses must actually be present at and actually attest the execution; and the deed will be invalid unless the attesting witnesses sign the attestation clause: *Wickham* v. *Marquis of Bath*, L. R., 1 Eq. 17. Execution by the grantor is sufficient, and the grantee need not sign the deed: *Grieves* v. *Case*, 2 Cox, 301.

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The enrolment (*c*) of a deed of gift to charitable uses is required by the stat. 9 Geo. 2, c. 36, to be in the High Court of Chancery, but the Enrolment Department is now at the Central Office of the Royal Courts of Justice: see stat. 42 & 43 Vict. c. 78, sect. 4; and the Rules of the Supreme Court, 1883, Ord. LXI. If the land is conveyed by one deed, and the trusts are declared by another, it is only now necessary to enrol the deed declaring the trusts. By the stat. 24 & 25 Vict. c. 9, it is enacted as follows:—

Enrolment.

Stat. 24 & 25 Vict. c. 9.

Sect. 2. "In all cases where the charitable uses of any deed or assurance hereafter to be made for conveyance of any hereditaments for any charitable uses shall be declared by any separate or other deed or instrument, it shall not be necessary, for the purposes of the [9 Geo. II. c. 36] or of this Act, to enrol such deed or assurance for conveyance; but every such deed or assurance for conveyance shall nevertheless be absolutely null and void, unless such separate or other deed or instrument shall within six calendar months next after the making or perfecting of such deed or assurance for conveyance be enrolled in Her Majesty's High Court of Chancery: and such enrolment as last aforesaid shall be deemed and treated for all purposes of the [9 Geo. II. c. 36] and of this Act as if such deed or assurance for conveyance had declared such charitable uses, and had been so enrolled as last aforesaid."

When charitable uses of any conveyance are declared by any separate or other deed, &c., enrolment of such separate or other deed, &c., requisite.

The enrolment of the deed declaring the original trusts is all that is necessary, and no subsequent deed transferring property to another charity need be enrolled. So a lease of land already in mortmain does not require enrolment: *Walker* v. *Richardson*, 2 M. & W. 882; *Att.-Gen.* v. *Glyn*, 12 Sim. 84: see

Enrolment.

(*c*) An examined copy of any deed required by law to be enrolled, appears to be good evidence of the original: see *ante*, Vol. I., p. 161, tit. ABSTRACTS.

Examined copies.

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Ashton v. *Jones*, 28 Beav. 460. There is no presumption of enrolment by length of time or otherwise: *Doe* d. *Howson* v. *Waterton*, 3 B. & Al. 149; *Wright* v. *Smythies*, 10 East, 409: and see *Wilson* v. *Allen*, 1 J. & W. 611, 619. But where the trustees admit the trust, the want of enrolment will not prevent the Court from supporting it: *Att-Gen.* v. *Ward*, 6 Ha. 477. Where a testator devised money upon trust for charity, if within ten years land should be granted and conveyed for the charitable purpose, and a deed of grant of lands was executed before but enrolled after the ten years had expired, it was held that as the grantor lived twelve months afterwards, the grant must be considered to be valid from the date of the execution of the deed: *Trye* v. *Corporation of Gloucester*, 14 Beav. 173. Where a renewable lease was granted for the purpose of a Nonconformist chapel, but was not enrolled, and no rent was paid for more than twenty years, and on the expiration of the original lease the fine for renewal was paid, together with some of the arrears of rent, it was held that the lease was void under the statute 9 Geo. 2, c. 36, and that the reversioner's right of action to recover possession of the building was not barred by the Statute of Limitations: *Bunting* v. *Sargent*, 13 Ch. D. 330.

Deeds for valuable consideration.

It was apparently considered formerly that enrolment was not necessary in the case of deeds made for valuable consideration. Any defect on this account was, however, cured as regards deeds made before the 25th of July, 1828, by the stat. 9 Geo. 4, c. 85 (*d*). And by the joint operation of the stats. 24 Vict. c. 9, sects. 3, 4; 25 Vict. c. 17; 26 & 27 Vict. c. 106; 27 Vict. c. 13, any deed made for valuable consideration, which has been enrolled before the 17th of May, 1866, is valid for the purposes of the stat. 9 Geo. 2, c. 36. But a perpetual provision for the remedy of omissions as to enrol-

(*d*) If mortgages require enrolment under the stat. 9 Geo. 2, c. 36, which seems doubtful, any invalidity on that account in a deed made between the passing of the statute and the stat. 9 Geo. 4, c. 85, is cancelled by the latter statute: *Doe* d. *Graham* v. *Hawkins*, 2 Q. B. 212.

ment being found necessary, it was enacted by the stat. 29 & 30 Vict. c. 57 :—Repealed 51 & 52 Vict. c. 59.

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Stat. 29 & 30 Vict. c. 57.

Sect. 1. "Any trustee, governor, director or manager of any charity, or any other person entitled to act in the management of or otherwise interested in any charitable trust, may, by summons in the summary way, and without service thereof upon any person, apply to the Court of Chancery for any order authorising the enrolment in the Court of any deed, assurance, or other instrument, whereby any hereditaments of any tenure or any estate or interest therein have or has been or shall be given, granted, or in any way conveyed, settled or charged for charitable uses, or of any other deed, assurance or instrument relative to or connected with any charitable trust, and which deed, assurance, or instrument ought to have been enrolled, but has not been enrolled within the time by law limited for that purpose or (where such deed, assurance or instrument has been lost or destroyed by time or accident, and the trusts thereof sufficiently appear by some subsequent deed appointing new trustees, or otherwise reciting the trusts created by the original deed, assurance or instrument) for an order authorising the enrolment of such subsequent deed."

Any trustee, &c., of any charity may apply to the Court of Chancery for order authorising enrolment of any deed, &c.

Sect. 2. "If the Court shall be satisfied by affidavit or otherwise that the deed, assurance or other instrument, conveying or charging the hereditaments, estate or interest for charitable uses was made really and *bonâ fide* for full and valuable consideration, actually paid at or before the making or perfecting thereof, or reserved by way of rent-charge or other annual payment, or partly paid at or before the making or perfecting of such deed, assurance, or other instrument, and partly reserved as aforesaid, without fraud or collusion, and that at the time of the application to the Court, possession or enjoyment is held under such deed, assurance, or other instrument, and that the omission to enrol the same in proper time has arisen from mere ignorance or inadvertence, or from the destruction thereof by time or accident, it shall be lawful for the Court to make an order authorising the enrolment in the Court of the deed, assurance, or instrument to which the application relates, or of a such subsequent deed, as the case may be, and the same shall thereupon be enrolled accordingly at any time within six calendar months from the date of the order, and no acknowledgment shall be necessary prior to enrolment."

If Court satisfied that deed, &c., was made *bonâ fide* for full and valuable consideration, Court may make order authorising enrolment.

Sect. 3. "Every enrolment made pursuant to an order of the Court under this Act shall, notwithstanding anything in the [9 Geo. II. c. 36] contained, have the same force and effect which by the [24 Vict. c. 9], as explained and amended by the [25 Vict. c. 17 and 27 Vict. c. 13], is given to the enrolment of a deed,

Force and effect given to deed, &c., by enrolment.

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assurance or other instrument, or of a subsequent deed, by the three last mentioned Acts respectively authorised to be enrolled, and duly enrolled according to the provisions thereof, and within the time thereby respectively limited."

Sect. 4. "Provided always, That nothing herein contained shall affect or apply to any deed, instrument or assurance as to which, at the time of any such application to the Court of Chancery, any action, suit or proceeding shall be pending for setting aside the same, or for asserting any right founded on the invalidity thereof, or any decree or judgment shall have been then already obtained founded on such invalidity."

Stat. 35 & 36 Vict. c. 24.

And the procedure in these cases was further simplified by the statute 35 & 36 Vict. c. 24, s. 13, which, after reciting the stat. 29 & 30 Vict. c. 57, set out above, enacts that:—

Repealed, 51 & 52 Vict. c. 42.

Enrolment where deeds have been lost, or not duly enrolled.

"If the clerk of enrolments in Chancery for the time being shall be satisfied, by affidavit or otherwise, that the deed, assurance, or other instrument conveying or charging the hereditaments, estate, or interest for charitable uses was made really and *bonâ fide* for full and valuable consideration actually paid at or before the making or perfecting thereof, or reserved by way of rent-charge or other annual payment, or partly paid at or before the making or perfecting such deed, assurance, or other instrument, and partly reserved as aforesaid, without fraud or collusion, and that at the time of the application to the said clerk of enrolments possession or enjoyment is held under such deed, assurance, or other instrument, and that the omission to enrol the same in proper time has arisen from ignorance or inadvertence, or from the destruction thereof by time or accident, it shall be lawful for the said clerk of enrolments to enrol the deed, assurance, or instrument to which the application relates, or such a subsequent deed as in the said Act mentioned, as the case may be, and the same shall thereupon be enrolled accordingly, and such enrolment shall be as valid and effective for all purposes as if the same had been made under the authority of the said last mentioned Act. Over and above the ordinary fee payable upon the enrolment of any deed, assurance, or other instrument, there shall be paid upon the enrolment under this section of any deed, assurance, or other instrument, the further fee of ten shillings."

Taking effect in possession.

As to taking effect in possession for the charitable use intended immediately from the making of the deed, it is enacted by the stat. 26 & 27 Vict. c. 106, that leases of land for charitable purposes, made to

commence at any time within a year from their date, shall be deemed to be thereby intended to take effect in possession within the stat. 9 Geo. 2, c. 36, and the concluding acts.

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The stat. 9 Geo. 2, c. 36, also provides (sect. 1) that the gift must "be made to take effect in possession for the charitable use intended immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, limitation clause, or agreement whatsoever, for the benefit of the donor or grantor, or of any person or persons claiming under him." It has been held that the grantor may reserve to himself a power of regulating the charity: *Grieves* v. *Case*, 2 Cox, 301. But where the grantor declared charitable trusts of property after his own death, but there being no trust of his property during the remainder of his life, there was a resulting trust to the grantor during his life, the gift was held bad: *Limbrey* v. *Gurr*, 6 Mad. 151; see *Wickham* v. *Marquis of Bath*, L. R., 1 Eq. 17. And by the stat. 24 & 25 Vict. c. 9, s. 1, it is enacted that:—

Reservation.

No future deed, &c., for charitable uses to be void by reason of not being indented or of specified stipulations for donor's benefit, &c.

"No deed or assurance to be made for any charitable uses whatsoever of any hereditaments of any tenure whatsoever, or of any estate or interest therein, shall be deemed null and void within the meaning of the first recited Act [*i.e.* the stat. 9 Geo. 2, c. 36], by reason of such deed or assurance not being indented or not purporting to be indented, nor by reason of such deed or assurance, or any deed forming part of the same transaction, containing any grant or reservation of any peppercorn or other nominal rent, or of any mines or minerals or easement, or any covenants or provisions as to the erection, repair, position, or description of buildings, the formation or repair of streets or roads, drainage or nuisances, or any covenants or provisions of the like nature for the use and enjoyment as well of the hereditaments comprised in such deed or assurance as of any other adjacent or neighbouring hereditaments, or any right of entry on non-payment of any such rent, or on breach of any such covenant or provision, or any stipulations of the like nature of the donor or grantor, or of any person or persons claiming under him, nor (in the case of any such assurance of hereditaments of copyhold or customary tenure, or of any estate or interest therein) by reason of the same not being made by deed, nor in the case of such assurances made *bonâ fide* on a sale for a

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full and valuable consideration, by reason of such consideration consisting wholly or partly of a rent, rent-charge, or other annual payment reserved or made payable to the vendor or to any other person with or without a right of re-entry for non-payment thereof: Provided always that in all reservations authorised by this Act the donor, grantor or vendor, shall reserve the same benefits for his representatives as for himself."

Void deed.

The grantor may take advantage of any informality in the grant: *Doe* d. *Willard* v. *Hawthorn*, 2 B. & Al. 96; *Doe* d. *Preece* v. *Howells*, 2 B. & Ad. 744: see also *Att.-Gen.* v. *Munby*, 1 Mer. 327; and if the deed is void under the statute, it is entirely inoperative; so that the execution of a deed which was void under the statute did not operate as a revocation of a will under the old law: *Matthews* v. *Venables*, 2 Bing. 136; see Shelford on Mortmain, 131. A devise of property which cannot be disposed of in trust for a charity, except under the statute, is entirely void, both as to the legal and equitable estates: *Adlington* v. *Cann*, 3 Atk. 141, 154; *Willet* v. *Sandford*, 1 Ves. 186; see also *Sweeting* v. *Sweeting*, 3 N. R. 240.

Valuable consideration.

It has been held that where the grantor, in consideration of the subscriptions of the congregation of a chapel for improving and enlarging it, demised the land on which the chapel stood at a peppercorn rent during his life, and after his death at the yearly rent of £10, neither the sum expended on the chapel nor the rent reserved on the grantor's death, was a full consideration paid for the lease so as to bring it within sect. 2 of the Mortmain Act: *Doe* d. *Willard* v. *Hawthorn*, 2 B. & Al. 96.

2. General Object and Scope of the Act.

General object of the Act.

The general object of this Act was to prevent dying persons from yielding either to their own weakness or to the many influences which can be brought to bear upon persons *in extremis*, from giving lands to charitable uses, and from being posthumously benevolent at the expense of their lawful heirs. There is no prohibition of gifts of land by deeds *inter vivos*, but there are regulations securing

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that such gifts shall not be in substance posthumous merely by avoiding the form. There is no prohibition of any amount of testamentary charity confined to pure personal property: per *James*, L.J., in *Attree* v. *Hawe*, 9 Ch. D., at p. 345.

Extent of the Act.

The policy of the Act is local, and its provisions can only be carried out in England: *Att.-Gen.* v. *Power*, 1 Ball & Bea. 145, 154.

Scotland.

Scotland is expressly excluded from it: *Att.-Gen.* v. *Stewart*, 2 Mer., at pp. 160—4; and there is nothing in Scotch law to prevent lands being given to what in England are termed charitable uses: Erskine Inst. bk. ii., tit. iv., sect. 10, 11; Juridical Styles, vol. i., 5.

Pure personalty in England may be directed to be applied in the purchase of lands in Scotland, so far as such purchase is consistent with Scotch law: *Oliphant* v. *Hendrie*, 1 B. C. C. 571; *Curtis* v. *Hutton*, 14 Ves. 537; *Macintosh* v. *Townsend*, 16 Ves. 330. Most kinds of charity can hold land in Scotland, but of course land, or moneys arising out of land in England, cannot be given to foreign charities: *Curtis* v. *Hutton*, 14 Ves. 537; and where a testator, a Scotchman, but who had no real property in England or Scotland, directed his personal estate to be laid out by his trustees who were Scotchmen, "in the purchase of lands or *rents of inheritance* in fee simple," and the income was to go to Scotch charity, it was held by the House of Lords "that there was no indication that the lands were to be purchased exclusively in Scotland, and therefore the gift failed:" *Att.-Gen.* v. *Mill*, 5 Bligh, N. S. 593; *S. C.*, 2 Dow & Cl. 393; this decision is questioned by Lord St. Leonards: see Sugd. Real Property, 418. A bequest to lay out money in the purchase of lands in Ireland is also good: *Campbell* v. *Earl of Radnor*, 1 B. C. C. 272; *Baker* v. *Sutton*, 1 Keen, 224, 234; *Att.-Gen.* v. *Power*, 1 Ball & Bea. 145, 154.

Ireland.

The stat. 9 Geo. 2, c. 36, does not extend to Ireland, but by 7 & 8 Vict. c. 97, s. 16:—

"No donation, devise, or bequest for pious or charitable uses in Ireland shall be valid to create or convey any estate in lands, tenements or hereditaments for such uses, unless the deed, will, or

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other instrument containing the same shall be duly executed *three calendar months* at the least before the death of the person executing the same, and unless every such deed or instrument not being a will shall be duly registered in the office for registering deeds in the city of Dublin within *three calendar months* after the execution thereof."

There seems no objection under this statute to bequests of money to be laid out in lands.

The Colonies and India.

Neither does the statute extend to the Colonies or India: *per* Sir W. *Grant* in *Att.-Gen.* v. *Stewart*, 2 Mer. 141; see *Whicker* v. *Hume*, 7 H. L. C. 124. By the Indian Succession Act, 1865, succession to the immovable property in India of a deceased person is regulated by the law of India, wherever he may be domiciled at the time of his death, and succession to his movable property in India is regulated by the law of his domicile. By the same Act, no man having a nephew or niece, or nearer relative, has power to bequeath any property to religious or charitable uses, except by a will executed twelve months before his death and deposited as therein required.

Act X. of 1865.

Under the Act X. of 1865, ss. 5, 105, a bequest of 10,000*l.* by a domiciled Scotchman, to be paid out of his mixed estate in India, was held valid; payment out of the movable property being directed as there is no marshalling against charity in Scotland: *Macdonald* v. *Macdonald*, L. R., 14 Eq. 60. Before the above statute it was quite clear that the stat. 9 Geo. 2, c. 36, did not apply to India: see *Att.-Gen.* v. *Giles*, 5 L. J., N. S. Ch. 44; *Mitford* v. *Reynolds*, 1 Ph. 185, 192; *Mayor of Lyons* v. *East India Co.*, 1 Moo. P. C. 173, 298. A bequest of pure personalty to charity in India is good: *Mitford* v. *Reynolds*, 1 Ph. 185.

Foreign land.

So, too, a devise of foreign lands to charitable uses is good, where there is nothing in the law of the foreign country to prevent it, and the proceeds of foreign land are held to be pure personalty in an English court: *Beaumont* v. *Oliviera*, L. R., 6 Eq. 534, affirmed on this point in L. R., 4 Ch. 309.

3. Exemptions from the Act.

Exemptions.

There are many exemptions from the statute of 9 Geo. 2, c. 36, both general and in favour of particular institutions in England itself.

Custom of London.

The custom of London was that a resident freeman might devise land in mortmain, but this only extended to land situated within the city : *Middleton* v. *Cater*, 4 B. C. C. 409. This custom was excepted out of the older Mortmain Acts, and, though at one time abolished, was revived and confirmed with other city customs by the stats. 27 Hen. 8, c. 24 ; 32 Hen. 8, c. 20 : see as to such confirmation the remarks of *Coke*, C. J. in 2 Bulst. 190 ; but the customs of the city have never been confirmed by statute since the 9 Geo. 2, c. 36 ; and the custom of devising property in mortmain is not excepted out of that Act : *per* Sir R. P. *Arden*, M.R., reported in Highmore on Mortmain, p. 127 ; but a contrary opinion is expressed in Bac. Abrid. *Charitable Uses* (B.) ; and it may be observed that the Act only expressly forbids gifts *to charitable uses*, not gifts in mortmain generally. For the effect of subsequent Acts upon 9 Geo. 2, c. 36, see *Luckcraft* v. *Pridham*, 6 Ch. D. 205. And as to the distinction between an enactment which dispenses with a license in mortmain, and one which enables individuals to devise, see *infra*, p. 15.

Exception in favour of the English Universities, and Eton, Winchester, and Westminster.

The exception in the Act relating to gifts to the English Universities and their colleges, and the three colleges of Eton, Winchester, and Westminster, requires to be noticed. Instances of such devises occur in the reported cases of *Emanuel College* v. *Bishop of Norwich*, 4 B. C. C. 482 ; *Att.-Gen.* v. *Andrew*, 3 Ves. 641 ; *Att.-Gen.* v. *Bowyer*, Id. 725. It has never been decided whether the proviso extends to colleges founded since the Act, as Downing College, Cambridge. In the case of *Att.-Gen.* v. *Tancred*, 1 Eden, 16, Lord *Northington* expressed an opinion that it was confined to colleges antecedently established ; but Lord *Loughborough* appears to have dissented from this opinion : see *Att.-Gen.* v. *Bowyer*, 3 Ves. at p. 728. It is clear that the statute renders valid the devise, as well of the

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legal estate as of the equitable interest: *Benet College* v. *Bishop of London*, 2 W. Bl. 1182; but, of course, it does not authorise devises of lands to colleges in trust for other charitable objects: *Att.-Gen.* v. *Tancred*, 1 Eden, 15; *S. C.*, 2 W. Bl. 90 (*e*); *Att.-Gen.* v. *Munby*, 1 Mer. 327. It seems not to be essential that the trust should embrace the whole college. A trust for the benefit of particular members would be within the proviso; and therefore, a devise to the Master and Fellows of Christ's College, in trust that they and their successors should apply the rents for some undergraduate student, has been held to be good: *Att.-Gen.* v. *Tancred*, 1 Eden, 10. But the devise must be for collegiate or academical purposes; and a gift to the college for the benefit of an individual member (the senior fellow for the time being) who was to live in the house, and entertain the poor, and distribute medicine and books among them, was held to be void on this principle: *Att.-Gen.* v. *Whorwood*, 1 Ves. Sen. 534. It appears to have been the opinion of Lord *Loughborough*, in the case of *Att.-Gen.* v. *Andrew*, 3 Ves. 633, that if a devise of real estate to a college was refused by the college, it might as the lands were originally devised to a valid purpose, be executed *cy près*.

Land tax.

The land tax on land in mortmain may be redeemed notwithstanding the Mortmain Acts: see 42 Geo. 3, c. 116, s. 9; and any sum or sums of money, may be given by will or otherwise to redeem land tax charged on lands in mortmain: *Ibid.* s. 50. But a legacy of money to be applied in discharge of a mortgage on land in mortmain is void: *Corbyn* v. *French*, 4 Ves. 418; *Waterhouse* v. *Holmes*, 2 Sim. 162; *Re Lynall's Trusts*, 12 Ch. D. 211.

Charity trustees, &c.

Charity corporations and trustees may take land by agreement from persons under disability, with the sanction of the Charity Commissioners, for the purposes of the charity: 16 & 17 Vict. c. 137, s. 27;

(*e*) In this case the devise to the college embraced other charitable objects; but the Court, nevertheless, held that the college took the whole beneficially. See also *Blandford* v. *Fackerell*, 4 B. C. C. 394.

18 & 19 Vict. c. 124, s. 41; and may invest on real security: 33 & 34 Vict. c. 34; 35 & 36 Vict. c. 24, s. 1.

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A licence in mortmain, or an Act dispensing with a licence in mortmain, though it enables the charity to which it refers to take property, does not enable the donor to give property which by reason of the 9 Geo. 2, c. 36, he could not otherwise give. The object of the licence is to enable the corporation or charity to hold lands, not to enable donors to evade the Statute of Mortmain. Thus by 9 Geo. 2, c. 36, the Bath Hospital was vested in a corporation which was enabled to take all sums of money which might be devised to them, and to take, purchase, &c., any lands without licence in mortmain. But Lord *Hardwicke* held "that the charter of incorporation was only granted by parliament to avoid expense to the promoters of that charity . . . . The clause mentioned was inserted to avoid the trouble of applying for a licence in mortmain, and was to be considered as such a licence that the governors are thereby empowered to take lands to such a value, but still with a proviso that they are granted to them in the manner prescribed by that law:" *Mogg* v. *Hodges*, 2 Ves. sen. 52: see also *British Museum* v. *White*, 2 S. & St. 594; *Robinson* v. *London Hospital*, 10 Ha. 19, 24; *Nethersole* v. *Indigent Blind School*, L. R., 11 Eq. 1; *Chester* v. *Chester*, L. R., 12 Eq. 444; *Luckcraft* v. *Pridham*, 6 Ch. D. 205. And in consequence of this decision, another Act, 19 Geo. 3, c. 23, was passed, enabling charitable persons to make gifts of any property by will or otherwise to the Bath Hospital, notwithstanding the 9 Geo. 2, c. 36. So where an institution was empowered to "have, hold, receive, enjoy, possess, and retain, for the purposes of the Act, and in trust for the benefit of the said institution, all such sum and sums of money as . . . . should at any time or times thereafter be paid, given, *devised*, or bequeathed [to the institution] . . . . without incurring any of the penalties or forfeitures of the Statutes of Mortmain," it was held that the Act gave no power to any person to make gifts to the institution which would be invalid under 9 Geo. 2,

Licence in mortmain.

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c. 36: *Nethersole* v. *Indigent Blind School*, L. R., 11 Eq. 1; following *Robinson* v. *London Hospital*, 10 Ha. 19, 24: see also *Chester* v. *Chester*, L. R., 12 Eq. 444; *Luckcraft* v. *Pridham*, 6 Ch. D. 205. But where an institution was authorised "by *will*, gift, purchase, or otherwise," to acquire land, "and also by *will*, gift, purchase, or otherwise," to acquire "any kind of personal estate," but without mentioning the Mortmain Acts, it was held that the 9 Geo. 2, c. 36, was *pro tanto* repealed: *Perring* v. *Trail*, L. R., 18 Eq. 88. The distinction between the two cases appears to be somewhat fine. Whether or not a charter granted by the Crown can over-ride the provisions of an Act of Parliament, the Court will, as long as the charter is subsisting, take notice of it, and hold itself bound thereby: *Robinson* v. *London Hospital*, 10 Ha., at pp. 23—26. So inasmuch as the charter of the London Hospital enabled any persons, &c., to give any kind of property to the Hospital, notwithstanding the 9 Geo. 2, c. 36, a gift to it not within that statute was supported: *Ibid.*

Charter from the crown.

Elementary and middle class schools.

Sites for schools for the education of poor persons may be granted, &c., by an absolute or limited owner, or by corporations, ecclesiastical or other, or by any officers, justices of the peace, trustees, or commissioners holding land for public, ecclesiastical, parochial, charitable or other purposes: 4 & 5 Vict. c. 38; 7 & 8 Vict. c. 37; 12 & 13 Vict. c. 4; 14 & 15 Vict. c. 24. The amount of land must not exceed *one acre* in the same parish or ecclesiastical district: 4 & 5 Vict. c. 38; 12 & 13 Vict. c. 49; 14 & 15 Vict. c. 24; and the sites revert to the grantor in case they cease to be used for the purposes of the Acts. The gift is good although the grantor should die within twelve months: 7 & 8 Vict. c. 37, s. 3; 12 & 13 Vict. c. 49, s. 4; but the deed must be enrolled, and nothing can be devised by will. Any number of sites may be granted for separate schools by one owner. A form of grant is given in the stat. 4 & 5 Vict. c. 38: and see Precedent II. *post*, p. 69. The Acts also authorise the sale or exchange of lands: see 4 & 5 Vict. c. 38, s. 14.

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The copyholder and the lord may jointly convey copyholds for this purpose without surrender: 12 & 13 Vict. c. 49, s. 6. A grant of land not exceeding *five acres* may be made in the like manner for training schools for elementary teachers: 12 & 13 Vict. c. 49, s. 4. The provisions of the Acts above referred to apply to "sites for schools or colleges for the religious or educational training of the sons of yeomen or tradesmen or others, or for the theological training of candidates for holy orders, which are erected or maintained in part by charitable aid, and which are in part self-supporting," if they are conveyed for valuable consideration, and do not exceed *two acres*: 15 & 16 Vict. c. 49. The Crown (10 Geo. 4, c. 50, s. 45; 28 & 29 Vict. c. 69, s. 4), the Duchess of Cornwall (7 & 8 Vict. c. 65, s. 26; 26 & 27 Vict. c. 49, s. 36), and Lancaster (4 & 5 Vict. c. 38, s. 2), Greenwich Hospital (28 & 29 Vict. c. 89, s. 30), and the Ecclesiastical Commissioners (4 & 5 Vict. c. 38; 23 & 24 Vict. c. 124, ss. 17—19, 30), may also grant lands for these purposes. Common lands may also be devoted to them: 6 & 7 Will. 4, c. 115, ss. 20, 22; 4 & 5 Vict. c. 38, s. 2. Sites which were conveyed for the purpose of a workhouse or asylum before 9th August, 1844, are valid without enrolment under 9 Geo. 2, c. 36: see stat. 7 & 8 Vict. c. 101, s. 73; but the latter Act does not apply to future conveyances. However, it has since been held that a poor-house is not a charity within 9 Geo. 2, c. 36: *Burnaby* v. *Barsby*, 4 H. & N. 690. The above-referred-to Acts for providing sites for schools apply to grants for enlarging churchyards or burial-grounds: 30 & 31 Vict. c. 133, ss. 4, 5. Grants of land not exceeding *two acres*, conveyed for valuable consideration to the trustees of "a society or body of persons associated together for religious purposes, or for the promotion of education, arts, literature, science, or other like purposes . . . . for the erection of a building for such purposes," are exempt (31 & 32 Vict. c. 44) from the provisions of 9 Geo. 2, c. 36. And from and after 25th May, 1871, "all gifts and assurances of land of any tenure, and whether made by deed

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or by will or codicil, for the purposes only of a public park, a school-house for an elementary school, or a public museum, and all bequests of personal estate to be applied in or towards the purchase of land for all or any of the same purposes only, shall be valid notwithstanding the statute 9 Geo. 2, c. 36, and other statutes commonly known as the Statutes of Mortmain:" 34 Vict. c. 13. But every will or codicil, and every deed other than a deed for value, by which a gift is made for the above purposes, which would not be valid under 9 Geo. 2, c. 36, must be made *twelve months* before the death of the testator or grantor, and must be enrolled with the Charity Commissioners within *six months* of its taking effect, and the limit to the extent of land is *twenty acres* for a park, *two acres* for a museum, or *one acre* for a school-house. There are also definitions of public park, school-house, and public museum in the stat. 34 Vict. c. 13. By the 36 & 37 Vict. c. 50, absolute owners or limited owners under a settlement or under disability "may grant, convey, or enfranchise by way of gift, or exchange in fee simple, or for any term of years, any quantity not exceeding *one acre* of such land, not being part of a demesne or pleasure ground attached to any mansion-house, as a site for a church, chapel, meeting-house, or other place of divine worship; or for the residence of the minister officiating in such place of worship, or in any place of worship within one mile of such site, or for a burial-place, or any number of such sites; provided that each site does not exceed the extent of one acre." And under this Act (sect. 5) lands may be conveyed to the Ecclesiastical Commissioners for the purposes of the Church Building Acts. This Act does not expressly exempt the donors from any of the provisions of the 9 Geo. 2, c. 36, and it is questionable whether it does so by implication: see *Per James*, L.J., *Luckcraft* v. *Pridham*, 6 Ch. D., at p. 212. The form of grant must be as near the form given in the Act as the circumstances of the case will admit: see *post*, Precedent I., p. 67. And by the 45 & 46 Vict. c. 21, corporations, ecclesiastical or lay, and

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any officers, justices of the peace, trustees, or commissioners, holding land for public, ecclesiastical, parochial, charitable or other purposes or objects, under certain restrictions, may take advantage of the last-mentioned Act; and there is also a further provision in the Act as to limited owners. And by the statute 22 Vict. c. 27, ss. 1, 2, 7, "Any lands may be lawfully conveyed to trustees to be held by them as open public grounds for the resort and recreation of adults, and as playgrounds for children, or for either of such purposes, and for any estate and subject to any reservations, restrictions, and conditions which the donor or grantor may think fit," according to the form given in the Act: see *post*, Precedent IV., p. 71; and such conveyance is exempt from the provisions of 9 Geo. 2, c. 36; and under the same Act any person may "bequeath any personal property not exceeding 1,000*l.* in amount, for the purpose of defraying the expenses of purchasing, preparing, maintaining, and preserving such grounds for the purposes aforesaid, and ornamenting the same:" 22 Vict. c. 27, ss. 1, 2, 7. Corporations may dedicate lands for the above purpose with the consent of the Treasury, and parishes with the approval of the Local Government Board: 22 Vict. c. 27, s. 3; 34 & 35 Vict. c. 70, s. 2. The 39 Eliz. c. 5, made perpetual by 21 Jac. 1, c. 1, which provided for the establishment of "hospitals, *maisons de Dieu*, abiding places or houses of correction," seems to be superseded and virtually repealed by the 9 Geo. 2, c. 36. By a recent Act, 41 & 42 Vict. c. 68, grants, devises, and bequests may be made, notwithstanding the 9 Geo. 2, c. 36, within the limit specified in the Act, to found certain new bishoprics, all of which, however, are now (1886) constituted, except the bishopric of Wakefield. The owner of any impropriate tithes may annex the same to the parsonage, vicarage, or curacy of the parish church or chapel where the same lie or arise, or may settle the same upon trust for the incumbent without any licence in mortmain: 17 Car. 2, c. 3, revived by 6 & 7 Vict. c. 37, s. 25; 13 & 14 Vict. c. 94, s. 23.

Donations to the Established Church

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As to building parsonage houses and buying more glebe land, or exchanging glebe lands for other land, see the statutes given below (*f*). A benefice may be augmented out of the tithes arising out of it by any ecclesiastical corporation being the impropriator of such tithes (29 Car. 2, c. 8, 1 & 2 Will. 4, c. 45), or by any gift or devise of redeemed land-tax (42 Geo. 3, c. 116, s. 162). And by the statute 43 Geo. 3, c. 108, any person may by deed enrolled, in such manner and within such time as is directed by 27 Hen. 8, c. 16 (*g*), for the enrolment of bargains and sales, or by will "duly executed *three calendar months* at least before the death of such grantor or testator, including the days of the execution and death," may convey lands not exceeding *five acres* or goods and chattels not exceeding in value *five hundred pounds* "for or towards the erecting, rebuilding, repairing, purchasing, or providing any church or chapel [of the Church of England], or any mansion-house for the residence of any minister of the said [church] officiating or to officiate in any such church or chapel, or of any outbuildings, offices, churchyard, or glebe for the same respectively." But only one such gift can be made by one person, and no glebe of more than fifty acres can be augmented by more than one acre. And the Crown or a lord of a manor may make grants under the last-named Act: 51 Geo. 3, c. 115. In a recent case, where the testator had erected a church at the cost of 15,000*l.*, and obtained a licence to hold services, according to the rites of the Church of England, there, and left the site and church to his wife absolutely, the heir-at-law alleged a secret trust and claimed the property. But upon its being

(*f*) 17 Car. 2, c. 3, s. 8; 17 Geo. 3, c. 53, ss. 10, 21; 55 Geo. 3, c. 147, s. 6; 7 Geo. 4, c. 66, s. 1; 1 & 2 Vict. c. 106, ss. 70, 72; 6 & 7 Vict. c. 37, s. 25; 28 & 29 Vict. c. 69.

(*g*) Under this statute bargains and sales must be "enrolled in one of the King's courts of record at Westminster, or else within the same county or counties where the same manors, lands or tenements so bargained and sold lie or be before the *custos rotulorum* and two justices of the peace, and the clerk of the peace of the same county, etc., within six months." See list of fees given in the Act.

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argued as a point of law, *Bacon*, V.-C., held that even assuming that there was such a secret trust, yet the gift was within the 43 Geo. 3, c. 108: *O'Brien* v. *Tyssen*, 28 Ch. D. 372, a decision which, it is submitted, somewhat strained the language of the Act in favour of the charity.

Church Building Acts.

Under the Church Building Acts (*h*) an endowment or grant or conveyance of a site for a church, church-yard, parsonage-house, or glebe, or for the repair of a church, may be made without conforming to the provisions of the Mortmain Acts; but an endowment or repair fund, whether made at one period or at different periods, must not in one case exceed the clear annual value of 300*l.*: 3 & 4 Vict. c. 60, s. 3; 14 & 15 Vict. c. 97, s. 8. There is, however, no limit to the extent of the endowments which under the New Parishes Acts (*i*) may be made outside the Mortmain Acts. Land purchased by the Ecclesiastical Commissioners for annexation to a benefice may be conveyed to them without licence in mortmain (29 & 30 Vict. c. 111, s. 9); but the Act does not do away with the necessity of enrolment under 9 Geo. 2, c. 36.

Public authorities.

Conveyances of lands to guardians of the poor, 5 & 6 Will. 4, c. 69, s. 7, or burial boards (15 & 16 Vict. c. 85, s. 24; 16 & 17 Vict. c. 134, s. 7); municipal corporations, Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), sects. 105, 107; the Metropolitan or District Board of Works (18 & 19 Vict. c. 120, ss. 42 and 43); drainage boards (24 & 25 Vict. c. 133, s. 66); highway boards (25 & 26 Vict. c. 61, s. 9); local boards under the Public Health Act (38 & 39 Vict. c. 55), sects. 7, 280 (42 & 43 Vict. c. 31); or to the Prison Commissioners (40 & 41 Vict. c. 21, s. 6); must be enrolled under 9 Geo. 2, c. 36. And conveyances or gifts to a

(*h*) 58 Geo. 3, c. 45, ss. 33—36; 59 Geo. 3, c. 134, ss. 37, 38; 3 Geo. 4, c. 72, ss. 1—3, 8, 26; 5 Geo. 4, c. 103, s. 14; 1 & 2 Wm. 4, c. 38, s. 9; 1 & 2 Vict. c. 107, ss. 6, 8, 9; 3 & 4 Vict. c. 60, s. 2, 3, 17; 36 & 37 Vict. c. 50, s. 5.

(*i*) 6 & 7 Vict. c. 37, ss. 12, 22; 7 & 8 Vict. c. 94, ss. 7, 11; 14 & 15 Vict. c. 97, s. 24; 19 & 20 Vict. c. 104, ss. 4, 23; 28 & 29 Vict. c. 42, s. 7.

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school board are not outside its provisions (33 & 34 Vict. c. 75, ss. 30 (1), 37 (3); 36 & 37 Vict. c. 86, s. 13), nor are the conveyances by which commons are acquired by corporations under the 39 & 40 Vict. c. 56, s. 8.

Company formed for charitable purpose.

A company formed under the Companies Acts, 1862 to 1883, is capable of holding lands to any extent: see the Companies Act, 1862 (25 & 26 Vict. c. 89), sect. 18; but by sect. 21 of that Act it is enacted that:—

25 & 26 Vict. c. 89, s. 21.

"No company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by the individual members thereof, shall, without the sanction of the Board of Trade, hold more than *two acres* of land; but the Board of Trade may, by licence under the hand of one of their principal secretaries, or assistant secretaries, empower any such company to hold lands in such quantity and subject to the conditions as they think fit."

This enactment will not render a conveyance to a company formed for a charitable purpose valid without enrolment, nor exempt it from the other provisions of the 9 Geo. 2, c. 36.

Certain institutions exempt.

Certain institutions are specially exempted from the operation of 9 Geo. 2, c. 36, either by their special Acts or by some public Act. A list of these is given below, so far as they can be ascertained, in alphabetical order (*j*). It is important with regard to these institutions to call attention to the observations above (p. 15), that a mere enactment to enable a corporation to hold lands without a licence in mortmain does not render individuals capable of disposing of their property to such corporation without 9 Geo. 2, c. 36. As to the Universities, there appears to be a conflict of authority whether the exemption in the statute includes colleges founded since its commencement. See per Lord *Northington*, 1 Eden, 16; and per Lord *Lough-*

(*j*) All persons are empowered by the Act or Acts set opposite to the name of the following charities to make gifts to them by will or otherwise. In many lists of exemptions from the Statutes of Mortmain, such as that in the official Index of the Statutes, 1883, the institutions empowered to hold lands are mixed up with

borough, 3 Ves. 728; but it is clear that the gift must be for the benefit of the college or some of its members, and not to the college as trustees for some other charity: *Att.-Gen.* v. *Tancred*, 1 Eden, 10; *Att.-Gen.* v. *Munby*, 1 Mer. 327; and the same remark would of course apply to any other excepted Institution.

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4. What Property may be given to Charity.

Gifts to charitable uses are void under the 9 Geo. 2, c. 36, either (1) because the property given is real estate or "savours of the realty"; or (2) because the gift contains a direction which involves the purchase of real estate, or the investment of the charitable funds in real estate, or on securities so connected with it as to be within the mischief contemplated by the Act.

Gifts void when.

(1) *Land and Investments savouring of Land.*]—The Act has been interpreted so as to prevent land

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the institutions to which lands may be given without complying with 9 Geo. 2, c. 36.

Name of Charity.	Statutes, &c., under which Exemption is Granted.
Bath Infirmary	19 Geo. 3, c. 23. *Makeham* v. *Hooper*, 4 B. C. C. 153.
British Museum	26 Geo. 2, c. 22, s. 14; 5 Geo. 4, c. 39, s. 3.
Cambridge University and the colleges therein	9 Geo. 2, c. 36, s. 4.
Eton College	9 Geo. 2, c. 36, s. 4.
Greenwich Hospital	10 Geo. 4, c. 25, s. 37; 28 & 29 Vict. c. 89, s. 43.
London Hospital	By charter. (See *Robinson* v. *London Hospital*, 10 Ha. 19, and above, p. 15).
Middlesex Hospital	6 Will. 4, c. 7 (local and personal).
Oxford University and the colleges therein	9 Geo. 2, c. 36, s. 4.
Queen Anne's Bounty	2 & 3 Anne, c. 11 (Rev. Stat., c. 20), s. 4; 43 Geo. 3, c. 107; but any deed must be enrolled under 27 Hen. 8, c. 16.
Royal Naval Asylum	51 Geo. 3, c. 105.
St. George's Hospital	4 Will. 4, c. 38 (local and personal).
Seamen's Hospital Society	3 Will. 4, c. 9, ss. 1 and 2.
Westminster Hospital	6 Geo. 4, c. 20 (local and personal).
Westminster School	9 Geo. 2, c. 36, s. 5.
Winchester College	9 Geo. 2, c. 36, s. 5.

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or anything charged on land (see 9 Geo. 2, c. 36, s. 3) from being by any device given to charitable uses, except in compliance with the restrictions imposed by the Act on such dispositions. As to the reasonableness of this precaution, see *per James* L. J., in *Attree* v. *Hawe*, 9 Ch. D. 337, at pp. 345 346. Thus besides copyholds: *Doe* d. *Howson* v. *Waterton*, 3 B. & Al. 149; *Arnold* v. *Chapman*, 1 Ves. 108; and leaseholds: *Att.-Gen.* v. *Graves*, Amb. 155; money invested on mortgage is within the Act, because the mortgagee being entitled to foreclosure, the land might easily come into the hands of the charity: *Att.-Gen.* v. *Meyrick*, 2 Ves. Sen. 44; *Att.-Gen.* v. *Caldwell* (terms of years), Amb. 635; *Pickering* v. *Stamford*, 2 Ves. Jun. 272, 581; 3 Ves. 332, 492; and see *Attree* v. *Hawe*, *supra*, at pp. 345, 346; *Alexander* v. *Braine*, 30 Bea. 153: *Lucas* v. *Jones*, L. R., 4 Eq. 73. Thus a mortgage of a life interest, and the reversion in a share of trust-funds invested on mortgage of real estate, is within the Act, because the charity would have the right to require the mortgage to be answered, and so would have an interest in land: *In re Watts*, *Cornford* v. *Elliott*, 29 Ch. D. 947. Incorporeal rights connected with land, such as a right to lay mooring chains in the river Thames, franchises, markets, and possibly tolls are also within the statute: *Negus* v. *Coulter*, Ambl. 367. Navigation shares made real estate by the Act creating them are of course within the statute: *Buckridge* v. *Ingram*, 2 Ves. jun. 652; *Hawse* v. *Chapman*, 4 Ves. 542. Bonds by Harbour Commissioners assigning the dues arising under their Act are interests affecting land within the stat. 2 Geo. 2, c. 36, and therefore cannot be given to charitable purposes: *Re Christmas*, *Martin* v. *Lacon*, 30 Ch. D. 544[x]; so also mortgages of turnpike tolls: *Knapp* v. *Williams*, 4 Ves. 430, n. But shares in a company holding land for the purposes of trade under ordinary circumstances are not within the Act: *Linley* v. *Taylor*, 1 Gif. 67; *Myers* v. *Perigal*, 2 De G. M. & G. 599; *Hilton* v. *Giraud*, 1 De G. & S. 183; *Sparling* v. *Parker*, 9

[x] Reversed, 33 Ch D. 332

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Beav. 450; *Edwards* v. *Hall*, 6 De G. M. & G. 74; nor are shares in a mine carried on on the cost-book principle: *Hayter* v. *Tucker*, 4 K. & J. 243; and even shares in a company whose special business is land-jobbing are not within the Act: *Entwistle* v. *Davis*, L. R., 4 Eq. 272.

Tendency of modern decisions.

The tendency of modern decisions is, that unless the land can by some means come into the hands of the individual shareholder, shares in a company owning lands are not within the Act: *Entwistle* v. *Davis, ubi sup.*

What investments savour of realty.

It has been recently held, by the Court of Appeal, reversing the older decisions, that debentures or other mortgages of a public undertaking by a corporation or company which cannot entitle the owner to anything but a payment in money, are not within the Act: *Attree* v. *Hawe*, 9 Ch. D. 337 (overruling *Ashton* v. *Lord Langdale*, 4 De G. & Sm. 402; and *Chandler* v. *Howell*, 4 Ch. D. 651); *à fortiori* debenture stock of a company is not within the Act: *Attree* v. *Hawe, ubi sup.*, at p. 346. But a share in a private partnership is within the Act, because it may be actually a charge on land: *Ashworth* v. *Munn*, 15 Ch. D. 363, 367, correcting some *dicta* in *Attree* v. *Hawe, ubi sup.* Arrears of rent, even when mining royalties: *Brook* v. *Badley*, L. R., 4 Eq. 106; *Thomas* v. *Howell*, L. R., 18 Eq. 198; see also *Edwards* v. *Hall*, 6 De G., M. & G. 74; bonds binding the heir: *Attree* v. *Hawe, ubi sup.*, at p. 346; *Emley* v. *Davidson*, 19 Ch. D. 156; a charge on the rates: *Re Harris*, 15 Ch. D. 561; *Jervis* v. *Lawrence*, 22 Ch. D. 202; and shares in a land society: *Entwistle* v. *Davis*, L. R., 4 Eq. 272; have been held not to be within the Act. But unpaid purchase-money giving to the donor a lien on the land: *Lucas* v. *Jones*, L. R., 4 Eq. 73; *Brook* v. *Badley*, L. R., 3 Ch. 672; see also *Harrison* v. *Harrison*, 1 R. & My. 71; money charged on land: *Arnold* v. *Chapman*, 1 Ves. sen. 108; judgment debts: *Collinson* v. *Pater*, 2 R. & My. 344; proceeds of sale of real estate directed to be sold: *Att.-Gen.* v. *Weymouth*, Amb. 20; or an unpaid premium on a lease: *Shepheard* v. *Beetham*, 6 Ch. D. 597; are

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within it. In *Cluff* v. *Cluff*, 2 Ch. D. 222, Consolidated Stock of the Metropolitan Board of Works was held to be within the Act. The time when the gift is made is the time at which the question what is, and what is not, an interest in land must be determined: *Brook* v. *Badley*, L. R., 3 Ch. 672.

Bequest of the proceeds of real estate within the statute.

Though the statute contains no express words prohibiting a bequest of money to be produced by the sale of land, yet it is settled that such a bequest is within the spirit and meaning of the enactment: *Curtis* v. *Hutton*, 14 Ves. 537; *Trustees of the British Museum* v. *White*, 2 S. & St. 595. Where A., being entitled to certain sums of money which were to be raised by the execution of a trust for sale of real estate, bequeathed all his personal estate to B.; B. bequeathed the residue of her personal estate to charity. It was held, that these sums, constituting an interest in land at the testator's death, could not be legally given to the charities: *Att.-Gen.* v. *Harley*, 5 Madd. 321.

Legacy partly real and partly personal, void *pro tanto*.

If the pecuniary gift is partly charged upon land and partly personal, it will be void *pro tanto*. And, therefore, where a testator devised a freehold estate to be sold, and the produce applied, together with so much of the personal estate as should be necessary, to secure an annuity of 30*l*. for the life of A., and, after his death, the principal to go to a charity; the freehold estate not being sufficient to raise the money, it was held that the bequest was good as to the residue, which was to be raised out of the personal estate: *Waite* v. *Webb*, 6 Madd. 71.

No appointment of a mixed fund.

But where a testator gave to a charity a legacy payable out of mixed real and personal estate, it was held that the bequest failed altogether: *Brook* v. *Badley*, L. R. 3 Ch. A. 672; *Re Watts*, *Cornford* v. *Elliott*, 29 Ch. D. 947.

Monies arising from policies of assurance are not within the Act, although the fund out of which the moneys are paid may be invested on real estate: *Att.-Gen.* v. *March*, 5 Beav. 433.

Evasion of the Act.

Where a testator devised copyholds in fee upon condition that the devisee should within one month pay 2,000*l*. to charitable uses, it was held that the

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devisee took the land free of the condition, and that the charitable uses were void under the Act: *Henchman* v. *Att.-Gen.*, 3 My. & K. 484. In a case where the donor with the view of evading the Act executed a voluntary deed by which he covenanted that, subject to his debts and any legacies bequeathed by his will, he or his executors would pay a sum to charitable uses within twelve months from his decease; and on the same day he made a will giving certain legacies, and appointed as his executors the persons named in the deed to receive the money devoted to charitable objects; the deed was never communicated to anyone during the donor's lifetime; the donor died possessed of a little pure personalty, but the bulk of his estate consisted of mortgages: it was held by the House of Lords, after much difference of opinion, and after consulting the judges, that the covenant was void except as to pure personalty: *Jeffries* v. *Alexander*, 8 H. L. C. 594; followed in *Fox* v. *Lownds*, L. R., 19 Eq. 453. But where a settlor covenanted to pay 20,000*l.* to trustees upon trust for his wife for life, and for himself for life if he should survive her, with remainder as his wife should appoint, and the wife by a deed which was part of the same transaction, appointed to charitable uses, the Court of Appeal held, that there appeared to be no design to evade the Act, and that although the settlor survived his wife, the 20,000*l.* was a mere debt due from his estate, and was payable out of proceeds of lands as well as out of pure personalty: *Emley* v. *Davidson*, 19 Ch. D. 156: where *Jeffries* v. *Alexander* and *Fox* v. *Lownds*, *ubi sup.*, are commented on by *Jessel*, M. R.

Secret trust.

The Court will not allow the Mortmain Act to be evaded by means of a secret trust where the devisee either expressly promises, or by his silence implies that he will carry out the intentions of the testator: *Wallgrave* v. *Tebbs*, 2 K. & J. 313, 321. The property in such a case goes to the heir or next of kin, or falls into the residue, as the case may be, for the devisee will not be allowed to take the property free from the charitable trust where no one can doubt

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that if he had stated to the testator that he would not carry out the secret trust, the disposition in his favour would not have been found in the will: *Russell* v. *Jackson*, 10 Ha. 204; see *Tee* v. *Ferris*, 2 K. & J. 357. So also where land was conveyed to trustees for the benefit of a charity by a deed duly attested and enrolled, and otherwise legal on the face of it, but there was evidence that the deed was not to take effect until after the grantor's death, it was held that the deed was invalid: *Way* v. *East*, 2 Drew. 44. But the intention to create a secret trust must be proved (*k*); and the mere fact of a grantor's retaining such a deed in his possession, and continuing in the occupation of the land, is not conclusive evidence of a secret agreement or understanding between himself and the grantee that he shall retain the benefit of the land during his life: *Fisher* v. *Brierly*, 1 De G. F. & J. 643. The doctrine that the trust, by whatever means established, will vacate the devise, evidently proceeds on the assumption that the trust, if legal, would have been binding on the conscience of, and might have been enforced against, the devisee; and if this ground fails, the rule does not apply. So where a testator, after devising lands by a will duly attested, declares a trust in favour of a charity by an unattested paper, the Statute of Frauds, as it would afford to the devisee a valid defence against any claim on the part of the charity, will equally defend him against any claim on the part of the heir on the ground of the charitable trust: *Adlington* v. *Cann*, 3 Atk. 141; *S. C.* 9 Ves. 519. The case would have been different if the devisee had prevailed on the testator to give him the estate absolutely, under the assurance that the unattested paper was a sufficient declaration of the trust for a charity: *Adlington* v. *Cann*, *supra*; or, under an express or implied promise that if the property should be given to

(*k*) A grantee or devisee may be compelled to discover a secret trust: *Newton* v. *Pelham*, cit. 1 Ed. 514. And if the trust is denied, it may be proved *aliunde*: *Edwards* v. *Picke*, 1 Cox, 17; *Kingsman* v. *Kingsman*, 2 Vern. 599; *Riordan* v. *Bauer*, 10 I. R. Eq. 469.

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him, he would carry out the trust: *Russell* v. *Jackson*, 10 Ha. 204; *Moss* v. *Cooper*, 1 J. & H. 352; *Springett* v. *Jennings*, L. R. 10 Eq. 488; see also *M'Cormick* v. *Geogan*, L. R. 4 H. L. 82; *Re Boyle*, 26 Ch. D. 531. But where the devisee knew nothing of the testator's intention during his lifetime and the property is given to the devisee absolutely on the face of the will, the Court will not go into any evidence to show that the testator was confident that the devisee would carry out his intentions: *Lomax* v. *Ripley*, 3 Sm. & G. 48; see also *Wallgrave* v. *Tebbs*, 2 K. & J. at pp. 313, 324, 328; *Jones* v. *Badley*, L. R. 3 Ch. 362; *Rowbotham* v. *Dunnett*, 8 Ch. D. 430. The Court looks with extreme suspicion on such transactions, and there must always be a certain amount of risk in thus trying to evade the law, but if the donor has sufficient confidence in the person intended by him to carry out the secret trust to leave him the property absolutely without telling him anything about it during his own lifetime it may be done. Thus a testator who intended to found a large blue-coat school, and who was in failing health, finding that he could not devote real and mixed estate to the charity, consulted his lawyer, and by his advice executed a will giving the bulk of his property to his wife. In the packet containing his will he placed a sealed letter addressed to her, in which he begged her to use a certain proportion of the income for her own benefit, and with the remainder of the property to carry out his intentions. The packet containing the will and the letter was intrusted to his wife, but she remained in complete ignorance of the contents or of any wish of the testator that she should carry out his intention until after his death, although she knew and approved his general intention to devote the bulk of his property to charitable objects. In that case it was held that, as the wife had never by word or act undertaken any trust, the absolute devise and bequest to her was good: *Lomax* v. *Ripley*, 3 Sm. & G. 48; 19 Jur. 272. The doctrine of this case is confirmed by the decision in *Jones* v. *Badley*, L. R. 3 Ch.

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362, and this seems the most practical way of evading the Act if necessary.

Directions to invest in land.

(2) *Directions to Invest in Land.*]—Any direction which renders it necessary to invest the funds given to the charitable use in real estate makes the gift itself void. Thus an imperative direction to purchase land (*Grieves* v. *Case*, 1 Ves. jun. 548; *S. C.* 4 Bro. C. C. 67), or to invest on mortgage (*Baker* v. *Sutton*, 1 Keen, 224) has that effect.

A recommendation to trustees to purchase land is imperative on them, and consequently is no less invalidating in its effect than a trust which is expressly mandatory: *Att.-Gen.* v. *Davies*, 9 Ves. 546; *Kirkbank* v. *Hudson*, 7 Pri. 212. But if by the investment clause the trustees have an option, and may in their discretion invest the moneys in securities not within the Mortmain Act, a direction in the alternative to invest on mortgage, or to purchase real estate, does not avoid the gift: *Sorresby* v. *Hollins*, 9 Mod. 221; *Grimmett* v. *Grimmett*, Ambl. 210, both decisions of Lord *Hardwicke;* but see *Mann* v. *Burlingham*, 1 Keen, 235; *Dent* v. *Allcroft*, 31 L. J., Ch. 211; *Wilkinson* v. *Barber*, L. R. 14 Eq. 96. Any direction to buy land or to erect buildings for charitable uses, and any trust for charitable uses which in the execution of it would involve the purchase of lands not already in mortmain, is void as being within the Act: see *Att.-Gen.* v. *Tyndall*, 2 Eden, 207; and cases collected in the note to that report at p. 215; see also *Pelham* v. *Anderson*, *ibid.* 296; *S. C.* 1 B. C. C. 444 n.; *Chapman* v. *Brown*, 6 Ves. 404. Thus a sum given to "establish" a school was held to mean that a school-house was to be built: *Att.-Gen.* v. *Hull*, 9 Ha. 647; see also *Re Clancy*, 16 Bea. 295; *Att.-Gen.* v. *Hodgson*, 15 Sim. 146; *Dent* v. *Allcroft*, 31 L. J., Ch. 211. In the earlier cases Lord *Hardwicke* allowed gifts to "erect" and "found" schools or other institutions, on the ground that those words applied metaphorically as well as physically: *Vaughan* v. *Farrer*, 2 Ves. sen. 182; but Lord *Eldon* laid it down that "the Court cannot put such a construc-

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tion upon the word 'erect' as was put upon that word in former cases; and that *primâ facie* the testator must be taken to mean by that word, that land shall be bought:" *Att.-Gen.* v. *Parsons*, 8 Ves. at p. 191. But in one case, where only the income of the fund was to be expended in "paying the expenses of providing a proper school-house," *Leach*, V.-C., held the gift good on the ground that the intention of the donor might be executed by hiring a school-house: *Johnston* v. *Swann*, 3 Mad. 457.

Buildings.

Gifts to erect buildings on lands already in mortmain are valid: *Brodie* v. *Duke of Chandos*, 1 B. C. C. 144 n.; *Att.-Gen.* v. *Parsons*, 8 Ves. 186; *Att.-Gen.* v. *Munby*, 1 Mer. 327; but "unless the testator distinctly points to some land already in mortmain, the Court will understand him to mean that an interest in land is to be purchased, and the gift is not good": *per* Lord *Eldon* in *Att.-Gen.* v. *Davies*, 9 Ves. at p. 544; see also *Att.-Gen.* v. *Munby*, 1 Mer. 327, 344; *Trye* v. *Corporation of Gloucester*, 14 Bea. 173; *Pratt* v. *Harvey*, L. R. 12 Eq. 544. But a gift to build upon land to be hereafter given is good. So where the donor gave large sums of money for a school and an asylum to be built by others, with an express direction that none of the moneys given by him should be applied in the purchase of lands or the erection of buildings, the gift was held good: *Henshaw* v. *Atkinson*, 3 Mad. 306. In *Philpott* v. *St. George's Hospital*, 6 H. L. C. 338, the testator devised to S. a piece of land in N. in fee. He then declared his wish to found almshouses in N., and empowered his trustees "so soon as land in N. shall have been legally dedicated to charitable uses" by some other person, within twelve months after his decease, to pay to the trustees of his intended charity 60,000*l.*, to be devoted to the purposes of the charity, but not to be applied in or towards the purchase of any lands. S. gave the piece of land devised to him to the intended charity, and the House of Lords held that the gift of 60,000*l.* was good. But the gift will not be supported unless the donor expressly, or by *necessary* implication from the terms of the instrument, excludes the purchase of any land not

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brought into mortmain from some other quarter, outside his own gift. Thus where a donor gave a sum of money to the governors of a charity which possessed land in mortmain, on condition that they would "furnish a piece of ground near" on which to build almshouses, Sir W. *Grant* in *Att.-Gen.* v. *Davies,* 3 Ves. 535, at p. 542, held that "the Court will not imply an intention of which the will affords no trace, that if the land should be *given* then, and then only, the building shall take place" (*l*), and this decision was confirmed by Lord *Eldon, ibid.* p. 544, and approved in *Philpott* v. *St. George's Hospital, ubi sup.* pp. 357, 358. Lord *Brougham* in *Giblett* v. *Hobson,* 3 My. & K. 517, seems to have held that the Court would look to circumstances *dehors* the will, in order to gather whether the testator intended his bequest to be applied in building on land already in mortmain or otherwise. But this opinion was *obiter,* and was not countenanced by the other Law Lords in *Philpott* v. *St. George's Hospital, ubi sup.*, see especially pp. 361, 363, 372.

In *Re White's Trusts* (30 W. R. 837; *S. C.*, 46 L. T. 248), a testator bequeathed a sum of money upon trust to "erect and build" alshouses "when a proper site can be obtained for the purpose," expressing a hope that some other person "would hereafter sufficiently endow the said almshouses": it was held that the bequest was valid.

In *Booth* v. *Carter,* L. R., 3 Eq. 757, Lord *Romilly,* M.R., held a gift "to be applied towards the erection" of a chapel to be good where the testator had been one of trustees holding a piece of land in mortmain, on which it was intended to build a chapel. But *Malins,* V.-C., refused to follow this decision: see *Re Watmough's Trusts,* L. R., 8 Eq. 272; and the former case is probably not to be considered good law. In *Hawkins* v. *Allen,* L. R., 10 Eq. 246, the donor gave a cheque for

(*l*) As to whether there ought to be any limit of time in which the land must be given, see case of *Downing College,* Ambl. 550, 571; *Att.-Gen.* v. *Bishop of Chester,* 1 B. C. C. 444; commented on in *Philpott* v. *St. George's Hospital, ubi sup.*, at pp. 59, 60: see the Thellusson Act, 39 & 40 Geo. 3, c. 98.

5,000*l.* shortly before her death to her doctor, in order that he might see it expended in founding a fever hospital. The money was invested in consols, and a deed of trust was subsequently executed, but was not communicated to the donor, by which the trusts were declared to be the erection (after the decease of the donor), and the future maintenance and support of a fever hospital. It does not appear to have been intended to buy land with this money. But *Malins*, V.-C., held that the gift was void, because there was no declaration that it was not intended to buy land. It seems quite clear that the gift would have been perfectly good, if the deed had, with the assent of the donor, contained such a declaration. And in the like circumstances, this point should be most carefully attended to. Again, where there is land already dedicated to the purpose indicated in the gift, and the land is identified by the terms of the gift, pure personalty may be given for building on the land. Thus where there is a glebe or other land already in mortmain, on which a parsonage-house can be built, a gift to build one is good: *Sewell* v. *Crewe-Read*, L. R., 3 Eq. 60; *Cresswell* v. *Cresswell*, L. R., 6 Eq. 69; *Champney* v. *Davy*, 11 Ch. D. 949. But where the testator bequeathed 3,000*l.* to a corporation having lands which it had power to dedicate to the purpose, 1,000*l.* to be expended in the erection of a dispensary, and 2,000*l.* in endowment, both gifts were held to be bad, because it was not clear that the testator meant to prohibit the corporation from purchasing lands with the 1,000*l.*, and the endowment fund being part of the same gift, failed with the other: *Re Cox*, *Cox* v. *Davie*, 7 Ch. D. 204.

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Where a testatrix bequeathed her residue in aid of erecting or of "endowing" (*m*) an additional church at A., Lord *Hatherley* held that it was a good gift of impure personalty for erecting the

Endowment of churches.

(*m*) Where the gift was to build *and* endow, it was altogether bad, except as to 500*l.* under the statute: *Girdlestone* v. *Creed*, 8 Ha. 208; 10 Ha. 480; and of course a gift merely to build: *Pratt* v. *Harvey*, L. R. 12 Eq. 544.

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church to the extent of 500*l.* under 43 Geo. 3, c. 108, and that as to pure personalty, it was a good gift for endowment, although no church was in contemplation at the moment, and that the executors were entitled to take 500*l.* out of impure personalty for the building fund, besides the whole of the pure personalty for the endowment: *Sinnett* v. *Herbert*, L. R., 7 Ch. 232. So a bequest of pure personalty for the endowment of churches and chapels in populous places is good: *Edwards* v. *Hall*, 11 Ha. 23; affirmed 6 De G. M. & G. 74; or to a society existing for the same purposes, but not entitled to hold land: *Church Building Society* v. *Barlow*, 3 De G. M. & G. 120. But a bequest to a society for buying up impropriate tithes, and revesting them in the Church of England, is bad: *Denton* v. *Lord John Manners*, 2 De G. M. & G. 675.

Gift to be applied in discharging an incumbrance on charity property invalid.

A gift to be applied in the liquidation of a subsisting incumbrance on land which is already subject to charitable uses, appears to have been considered as not falling within the principle applicable to trusts for the amelioration and improvement of charity property, but as appropriating to charity a new interest in land. Thus, it has been held, that a bequest of a sum of money to be applied in paying off a mortgage debt on a meeting-house cannot be supported: *Corbyn* v. *French*, 4 Ves. 418; and the circumstance that the incumbrance on the chapel is equitable only is immaterial: *Waterhouse* v. *Holmes*, 1 Sim. 162. A bequest, however, for the payment of debts incurred in respect of a meeting-house, which are not a lien upon it, is valid: *Bunting* v. *Marriott*, 19 Beav. 163: see *Re Lynall's Trusts*, 12 Ch. D. 211, where a legacy was given to trustees to be applied in payment of debts "owing or chargeable upon, or in any manner claimable against" certain almshouses situated on land in mortmain, was held to be void.

Legacy founded on an illegal devise void.

Where a legacy, which standing alone would be valid, is founded upon and derives its purpose and object from an illegal devise, it is necessarily involved in the failure of such devise. Thus, if a testator, after devising certain messuages to be con-

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verted into almshouses, bequeaths the interest of a sum of money to the occupiers of such houses—as the devise is clearly void, the legacy is equally so: *Att.-Gen.* v. *Goulding*, 2 B. C. C. 428; *Att.-Gen.* v. *Whitchurch*, 3 Ves. 141; *Limbrey* v. *Gurr*, 6 Madd. 151; *Price* v. *Hathaway*, Id. 304; *Att.-Gen.* v. *Hodgson*, 15 Sim. 146; *Smith* v. *Oliver*, 11 Beav. 481; *Re Cox*, *Cox* v. *Davie*, 7 Ch. D. 204. Or if a testator devises a messuage to be used as a school-house for the education of poor children, and bequeaths a fund to trustees, with a direction to apply the income in keeping the school-house in repair and providing a master, the statute, by invalidating the devise of the house, deprives the pecuniary legacy of its object, which consequently fails: *Att.-Gen.* v. *Hinxman*, 2 J. & W. 270 (*n*); and in some other instance presenting not quite so simple and obvious an application of the principle, a bequest, valid in itself, has been held to fail from the impracticability of the general scheme, of which it forms a part: *Grieves* v. *Case*, 2 Cox, 301; *S. C.*, 4 B. C. C. 67.

Equity will not execute a trust which is within the statute.

It is to be observed, that if a legacy, which is directed to be laid out in land, is actually paid (the party paying it not availing himself of the statute), and the trustee lays it out accordingly, the Court will not execute the trust: *Att.-Gen.* v. *Ackland*, 1 R. & My. 243 (*o*).

Assets not marshalled in favour of charity.

It is an important and well-established rule, that assets will not be marshalled in favour of a charity, or, in other words, that where a mixed fund, consisting partly of what may be legally given to

(*n*) In cases the converse of this, namely, where the valid gift is the primary one, and the invalid gift is ancillary and subordinate to it, the former, of course, is not affected by the illegality of the latter: *Blandford* v. *Fackerell*, 4 B. C. C. 394; *Att.-Gen.* v. *Stepney*, 10 Ves. 22.

(*o*) On refunding sums erroneously paid, a legatee, who has no further property in the estate, is not liable to interest; *secus*, if the legatee is entitled to another fund making interest in the hands of the Court: *Gittins* v. *Steele*, 1 Swanst. 199. Where lands devised to a charity have been for a long time applied accordingly it will be presumed as against the heir that all proper steps were taken to dedicate the property to charitable purposes: *Att.-Gen.* v. *Moor*, 20 Beav. 119.

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charity, and partly of what cannot be so given, as for instance, a bond debt and a mortgage debt, are bequeathed for purposes, some charitable and some not charitable, the Court will not apply the part which cannot be given to charity exclusively to the other purposes, in order to render the charitable gift operative upon the remainder; but will hold the bequest of the mortgage to be void *pro tanto*, *i.e.*, in respect of so much as would, upon a rateable distribution of the entire fund, have been applied to charitable purposes: *Att.-Gen.* v. *Tyndall*, 2 Eden, 207; *Middleton* v. *Spicer*, 1 B. C. C. 201; *Att.-Gen.* v. *Earl of Winchelsea*, 3 B. C. C. 373; *Makeham* v. *Hooper*, 4 Id. 153. So, where a general residue, consisting partly of what cannot be legally devoted to charity, as leaseholds or mortgages, is bequeathed to a charity after payment of debts or legacies, these charges will not be thrown exclusively on the leaseholds and mortgages, in order to leave the remainder of the personal estate for the residuary bequest to operate upon, but the debts or legacies will be paid *pro ratâ* out of the entire property, and the unapplied portion of the leaseholds and mortgages will go to the next of kin, and the unapplied portion of the rest to the charity: *Att.-Gen.* v. *Earl of Winchelsea*, 3 B. C. C. 373; *Howse* v. *Chapman*, 4 Ves. 542; *Paice* v. *Archbishop of Canterbury*, 14 Ves. 373; *Curtis* v. *Hutton*, Id. 540; *Currie* v. *Pye*, 17 Ves. 464: see also *Mogg* v. *Hodges*, 2 Ves. sen. 52; *Crosbie* v. *Mayor of Liverpool*, 1 R. & My. 761, n.; *Hobson* v. *Blackburn*, 1 Keen, 273; *Williams* v. *Kershaw*, 5 C. & Fin. 111.

Sometimes the effect of this rule is to make the legacy fail altogether. In the case of *Cherry* v. *Mott*, 1 My. & C. 123, where a testator, reciting his intention, if he recovered his health, of contracting with the Governors of Christ's Hospital for the purchase of a presentation of a boy to that charity, desired that if the money arising from his residuary personal estate should be sufficient for the purpose, the contract should be made, the Master of the Rolls (Lord *Cottenham*) said, "This legacy is conditional. There is no gift if the personal estate

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be not sufficient to fulfil the contract; and it appears that such is the case, the governors declining the sum offered on the ground of its inadequacy. Indeed, from the rules applicable to charity legacies, such must be the case. Part of the testator's property consists of personalty of such a nature, or in such a state of investment, as cannot be applied to purposes of charity. There being no marshalling in favour of a charity legacy, the general personal estate, mixed and pure, must in the first place be considered as apportioned for the purpose of paying the several legacies." And it was accordingly held that the legacy was void: see also *Philanthropic Society* v. *Kemp*, 4 Beav. 581; *Sturge* v. *Dimsdale*, 6 Beav. 462; *Briggs* v. *Chamberlain*, 18 Jur. 56. The general conclusion to be deduced from the cases is, that where a testator gives a charitable legacy, the will should contain an express provision directing the legacy to be paid out of the pure personalty, otherwise, if the general residue includes leaseholds or real securities, the legacy will be *pro tanto* or altogether void: see Jarm. Wills, 236, where this question is very fully and ably discussed: see also *Re Coleman, Collins* v. *Coleman*, W. N. 1884, p. 104; *Re Pitt, Lacy* v. *Stone*, 33 W. R. 653; 53 L. T. 113; W. N. 1885, p. 61.

Gifts of personalty.

Gifts of Personalty—Cy pres.]—The statute of 9 Geo. 2 leaves the disposition of personal estate, other than chattel interests in land, quite unrestrained, except where directed to be laid out in land; so that, with this qualification, a man may, by his will, bequeath his whole personal estate to charitable purposes, in despite of the claims of his nearest kindred; and, by a rule of construction peculiar to charitable gifts, if the donor declares his intention in favour of charity in general, without any specification of objects; or even if he refers to a past or future specification which he never has made, or does not afterwards make; or if the gift is to a charity which has ceased to exist, or is illegal (*e.g.* being for the propagation of doctrines of religion which the law does not sanction, *Cary* v.

Cy pres doctrine applied to charitable gifts.

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Abbott, 7 Ves. 490), or which refuses to accept the proffered bounty; though by this means the particular object is become impracticable or unascertainable; yet the main and substantial purpose being charity, that purpose will not be defeated by the failure of the particular object, but the trust will be executed *cy pres*, *i.e.* the Court or the Crown, by *sign manual*, will direct its application to some existing purpose consistent, so far as may be, with the spirit of the testator's design: *Anon.* Freem. Ch. Cas. 262; *Baylis* v. *Att.-Gen.*, 2 Atk. 249; *De Costa* v. *De Pas*, Amb. 228, cit. 7 Ves. 76; *Att.-Gen.* v. *Herrick*, Amb. 712; *White* v. *White*, 1 B. C. C. 12; *Att.-Gen.* v. *City of London*, 3 B. C. C. 176; *Moggridge* v. *Thackwell*, 1 Ves. jun. 464, 7 Ves. 36; *Att.-Gen.* v. *Andrew*, 3 Ves. 633; *Cary* v. *Abbott*, 7 Ves. 490; *Paice* v. *Archbishop of Canterbury*, 14 Ves. 364; *Mills* v. *Farmer*, 1 Mer. 55; *Martin* v. *Maugham*, 8 Jur. 609; *Ironmongers' Co.* v. *Att.-Gen.*, 10 Cl. & F. 908; *Att.-Gen.* v. *Gladstone*, 13 Sim. 7; *Hayter* v. *Trego*, 5 Russ. 113; *Loscombe* v. *Wintringham*, 13 Beav. 87; *Att.-Gen.* v. *Vint*, 3 De G. & S. 704; *Re Clergy Soc.*, 2 K. & J. 615; *Langford* v. *Gowland*, 3 Gif. 617; *Marsh* v. *Means*, 5 W. R. 815; *New* v. *Bonaker*, L. R. 4 Eq. 655; *Re Maguire*, L. R. 9 Eq. 632; *Chamberlayne* v. *Brockett*, L. R. 8 Ch. 206; *Re Clark's Trust*, 1 Ch. D. 497. Where, however, a testator shows an intention not of general charity, but to give to some particular institution, then, if it fails because there is no such institution, the gift does not go to charity generally, and is not administered *cy pres*, but lapses as in the case of a gift to an individual who has died: *Clark* v. *Taylor*, 1 Drew. 642; *Russell* v. *Kellett*, 3 Sm. & G. 264; *Fisk* v. *Att.-Gen.*, L. R. 4 Eq. 521; *Re Ovey, Broadbent* v. *Barrow*, 29 Ch. D. 560. See further as to the nature and operation of the doctrine of *cy pres*, 1 Jarm. Wills, p. 243 *et seq.* It may be observed here that an unauthorized application of charity funds by trustees on the *cy pres* principle of however long duration, will not be a valid ground of objection to a scheme of the Charity Commissioners for a different *cy pres*

application of the fund: *Re Campden Charities*, 18 Ch. D. 310.

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The doctrine of *cy pres* ought not to be dismissed without calling attention to the rule that the doctrine does not apply to bequests which are vacated by the statute of 9 Geo. 2, c. 36, and accordingly a bequest of money to be laid out in land is not executed *cy pres*, that is to say, applied to permitted charitable purposes. But an express gift over in case the charitable gift cannot legally take effect in the manner expressed is valid: per Lord *Eldon*, in *Sibley* v. *Perry*, 7 Ves. 522, overruling *Att.-Gen.* v. *Tyndall*, 2 Ed. 207; see also *Warren* v. *Rudall*, 4 K. & J. 603; *Robinson* v. *Robinson*, 19 Beav. 494; *Mayor of Lyons* v. *Adv.-Gen. of Bengal*, 1 App. Ca. 91.

Cy pres doctrine not applied to cases within the stat. 9 Geo. 2, c. 36.

5. What is Charity.

Lord *Hardwicke* defined charity to be a general public use, which extends to the poor as well as to the rich: *Jones* v. *Williams*, Amb. 651.

Definition of Charity.

Objects which will be carried out by the Court as charitable fall into four classes:—1. The relief of poverty; 2. The advancement of religion; 3. Education; 4. Objects of general public utility. These have been established as legitimate objects of charitable donations in analogy to the preamble to the statute 43 Eliz. c. 4, set out below (*p*). The trust declaring the object of the donation must not only

Definiteness.

(*p*) "Whereas divers lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and stocks of money, have been heretofore given, limited, appointed, and assigned, as well by the Queen's most excellent majesty and her most noble progenitors as by sundry other well-disposed persons, some for relief of aged, impotent, and poor people; some for maintenance of sick and maimed soldiers and mariners; schools of learning, free schools, and scholars in universities; some for repair of bridges, ports, havens, causeways, churches, sea-banks, and highways; some for education and preferment of orphans; some for or towards relief, stock, or maintenance of houses of correction; some for marriages of poor maids; some for supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; and others for relief or redemption of prisoners or captives, and for aid or ease of any poor inhabitants concerning payments of fifteens, setting out of soldiers and other taxes."

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make it clear that the object is charitable in the legal sense, but must also be declared in such terms as to enable the Court to carry out the trust. "It is a maxim, that the execution of a trust shall be under the control of the Court, it must be of such a nature that it can be under that control, so that the administration of it can be reviewed by the Court; or if the trustee dies, the Court itself can execute the trust; a trust therefore which, in case of mal-administration, could be reformed, and a due administration directed, and then unless the subject and the objects can be ascertained upon principles familiar in other cases, it must be decided that the Court can neither reform mal-administration nor direct a due administration:" per Lord *Eldon* in *Morice* v. *Bishop of Durham*, 10 Ves. at p. 539.

In that case the testatrix bequeathed the residue of her personal estate to be disposed of "to such objects of benevolence and liberality" as the Bishop should most approve. Lord *Eldon* held that if the testatrix had intended a gift to charitable uses, she had not expressed herself with sufficient definiteness, and the gift therefore failed. And it seems to be settled, that unless the trustees, not merely may, but are absolutely bound to apply the bequest for purposes wholly charitable, the gift is bad: per Sir W. *Grant* in *Morice* v. *Bishop of Durham*, 9 Ves. at p. 406, and in *James* v. *Allen*, 3 Mer. 17, 19; quoted with approval by Lord *Cottenham* in *Ellis* v. *Selby*, 1 My. & Cr. at p. 299. Thus a trust to apply money for "such charitable or other purposes" (*Williams* v. *Kershaw*, 5 Cl. & F. 111), or "for such benevolent, charitable, and religious purposes" (*Ellis* v. *Selby*, 7 Sim. 352, affirmed 1 My. & Cr. 286, 298), or for such "charitable or benevolent purpose" (*Re Jarman's Estate, Leavers* v. *Clayton*, 8 Ch. D. 584; *Re Hewett's Estate*, 49 L. T. 587), as the trustees shall think fit, is bad.

So, where an estate was devised to trustees, to be applied by them, and the minister of the congregation of Methodists assembling at L., and as they should from time to time think fit to apply the same, it was held, that the devise was not charitable, the

application being left to the trustees indefinitely: *Doe* d. *Toone* v. *Copestake*, 6 East, 328.

Again, where a testator gave the residue of his estate to his executors, upon trust to apply the same in or towards such charitable uses or purposes, person or persons, or otherwise, as he might by any codicil or writing appoint, and as the laws of the land would admit of; and in default, upon trust to pay and apply the same in or towards such charitable or public purposes as the laws of the land would admit of; or to any person or persons, and in such shares, manner, and form as his (the testator's) executors, or the survivor of them, or the executors or administrators of such survivor, should in their or his discretion think fit, and as the laws of the land did not prohibit.—Sir J. *Leach*, V.-C., observed that the testator had not fixed upon any part of the property a trust for a charitable use, and the Court could not, therefore, devote any part of it to charity; he had given it to the trustees expressly upon trust, and they could not, therefore, hold it for their own benefit. The purposes of the trust being so general and undefined, they must fail altogether, and the next of kin become entitled: *Vezey* v. *Jamson*, 1 S. & St. 69.

So, also, where the gift was "for the relief of domestic distress, assisting indigent but deserving individuals, or encouraging undertakings of general utility" at the discretion of the executors: *Kendall* v. *Granger*, 5 Bea. 303; or where it was for "charitable pious uses:" *Down* v. *Warrell*, 1 My. & K. 561: see *Heath* v. *Chapman*, 2 Drew. 417. But a gift to "charitable and deserving objects" is a good charitable gift: *Re Sutton*, 28 Ch. D. 464; and so is a gift to "charitable and other public purposes in the parish of T.," for public purposes must in such a case be taken to be intended for the benefit of the parish: *Dolan* v. *McDermont*, L. R. 3 Ch. 676. In default of the executors acting in such a case, or in case they act wrongly, the Court will distribute the fund: *Att.-Gen.* v. *Doyley*, 4 Vin. Abr. 485; 2 Eq. Cases, Ab. 194; 7 Ves. 58, n.; *Salusbury* v *Denton*, 3 K. & J. 529; *Adnam* v. *Cole*, 6 Bea. 363.

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Some of these decisions are perhaps to be regretted. Lord *Eldon* early laid it down "that there is no magic in words:" *Morice* v. *Bishop of Durham*, 10 Ves. at p. 542; but the effect of some of these decisions is that the word "charity" has gained a highly technical meaning, and that the word "benevolent," for instance, which in common acceptation means the same thing as charity, has been excluded altogether from creating a charitable trust: *Morice* v. *Bishop of Durham*, 9 Ves. 399; *S. C.*, 10 Ves. 532; *James* v. *Allen*, 3 Mer. 17: see *Att.-Gen.* v. *Mayor of Dartmouth*, 48 L. T. 933.

Official position.

A gift to a person in a position connected with a charity will generally be construed as charitable, as a gift to the governors of a charity: see *Incorporated Soc.* v. *Richards*, 1 Dr. & W. p. 294: see also the observations of Lord *Hatherley* in *Att.-Gen.* v. *Sidney Sussex Coll.*, L. R. 4 Ch. at p. 730. So also a gift to a minister: *Grieves* v. *Case*, 1 Ves. jun. 548; *Smart* v. *Prujean*, 6 Ves. at p. 567; *Thornton* v. *Wilson*, 3 Drew. 245; *Gibson* v. *Representative Church Body*, 9 L. R. Ir. 1. But the fact that the minister of a dissenting congregation was appointed trustee did not make an indefinite bequest good: *Doe* d. *Toone* v. *Spestake*, 6 East, 328. And a devise to a minister with the expression of an expectation that he will carry on the work of God, does not make it a charitable gift, but a gift to an individual: *Doe* d. *Phillips* v. *Aldridge*, 4 T. R. 264. But where a testatrix had left legacies to charitable institutions, and directed the residue of her estate to be divided amongst "the different institutions [named in her will], or to any other religious institution or purposes" as her executors might think fit, the gift was held good: *Wilkinson* v. *Lindgren*, L. R. 5 Ch. 570. So where a testator directed his residue to be given to "such charitable institutions as I shall by any future codicil give the same, and in default of any such gift, then to be distributed by my executors at their discretion," and made no further codicil, the gift was held good: *Pocock* v. *Att.-Gen.*, 3 Ch. D. 342. The Court, if there is a clear intention to make a gift to charitable uses, although the uses are left indefinite, will

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apply the money to charitable uses, and direct a scheme for the purpose: *Moggridge* v. *Thackwell*, 7 Ves. 36; *Mills* v. *Farmer*, 1 Mer. 55.

So where a testatrix directed her residue to be applied towards the erection or endowment of a church at A., it was held that the Court would retain the fund until there was a prospect of a church being erected, or apply it *cy pres*: *Sinnett* v. *Herbert*, L. R. 7 Ch. 232. So, too, where there is an out-and-out gift to charity, but the mode of application is conditional on circumstances, the gift is not void; but if the conditional mode of applying the charity is not possible, it will be applied *cy pres*: *Chamberlayne* v. *Brockett*, L. R. 8 Ch. 206. And where the residue was directed to be applied by the trustees among hospitals or other charitable institutions as they should think fit, it was held that such a gift, as far as impure personalty was concerned, was equivalent to a gift to charities exempt from the Mortmain Act to be selected by the trustees, and therefore a valid gift: *Lewis* v *Allenby*, L. R. 10 Eq. 668.

Poverty and sickness.

A bequest to the poor of a place is a good charitable use: *Woodford* v. *Parkhurst*, Duke 70 (378); *Att.-Gen.* v. *Clark*, Amb. 422; but a gift to the poor generally which means the poor of all England must be disposed of by the Crown under the sign manual: *Att.-Gen.* v. *Peacock*, Finch. 245; *Att.-Gen.* v. *Matthews*, 2 Lev. 167; but in a later case, *Att.-Gen.* v. *Rance*, Ambl. 422, there being nothing to indicate what poor were meant, the fact that the testator was a French refugee was held sufficient to enable the Court to order the fund to be given to poor refugees. A gift to a parish will be decreed to the use of the poor of the parish, and the churchwardens may take such a gift, though they are not a corporation: *West* v. *Knight*, 1 Ch. Ca. 134; *Champion* v. *Smith*, Duke, 81 (622); *Doe* d. *Preece* v. *Howells*, 2 B. & Ad. 744; see also *Att.-Gen.* v. *Webster*, L. R. 20 Eq. 483; *Re St. Bride's*, W. N. 1877, pp. 95, 149. Poverty being the "principal and essential circumstances to bring a gift within the compass of this statute" (see Duke, 132), a gift to the widows and orphans of the parish of L. will be

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construed the *poor* widows and orphans: *Att.-Gen.* v. *Comber*, 2 S. & St. 93, followed in *Thompson* v. *Corby*, 27 Beav. 649. In the same way a gift to the widows and children of seamen belonging to the town of L.: *Powell* v. *Att.-Gen.*, 3 Mer. 48. A bequest to the poor inhabitants will extend to every poor person living in the parish not in receipt of parish relief: *Att.-Gen.* v. *Clark*, Amb. 422; *Bishop of Hereford* v. *Adams*, 7 Ves. 324; *Att.-Gen.* v. *Wilkinson*, 1 Beav. 372; *Att.-Gen.* v. *Bovill*, 1 Phil. 762; *Att.-Gen.* v. *Corporation of Exeter*, 2 Russ. 45. A gift to "poor credible industrious persons residing at A. with two children or upwards, or above fifty years of age, married or otherwise, unable to get a living" is a good charitable gift: *Russell* v. *Kellett*, 3 Sm. & G. 264. A gift to the inhabitants of T. Row, in the parish of S., is not a charitable gift: *Rogers* v. *Thomas*, 2 Keen, 8. A bequest to the churchwardens and overseers of the parish in aid of the poor's rate is a good charitable use: *Doe* d. *Preece* v. *Howells*, 2 B. & Ad. 744; *Hospitals Corporation of Reading* v. *Lane*, Duke, 81, 111 (361); *Att.-Gen.* v. *Kells*, 2 Beav. 575; *Hawkins* v. *Allen*, L. R. 10 Eq. 246; *Re Alchin's Trusts*, L. R., 14 Eq. 230; the relief of prisoners and captives: *Att.-Gen.* v. *Painters' Co.*, 2 Cox, 51; the benefit of assisted emigrants: *Barclay* v. *Maskelyne*, No. 2, 4 Jur., N. S. 1294; or of persons residing in a workhouse: *Att.-Gen.* v. *Vint*, 3 De G. & S. 704, are all charitable objects. But the prisoners must not be criminals. So where a testator left a bequest for paying the fines, &c., of prisoners convicted under the game laws, and discharging them from prison, it was held an illegal use: *Thrupp* v. *Collett*, 26 Beav. 125; see also *Re Prison Charities*, L. R., 16 Eq. 129. A conveyance of land to the overseers for the purpose of building a workhouse, is not a charitable gift: *Burnaby* v. *Barsby*, 4 H. & N. 690. A soup kitchen is a good charity: *Biscoe* v. *Jackson*, 46 L. T. 355; and so is a society whose purpose is teaching poor children, and nursing the sick: *Cocks* v. *Manners*, L. R., 12 Eq. 574; but a friendly society is not: *Re Clark's Trust*, 1 Ch. D.

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497. Gifts to deserving literary men who have been unsuccessful: *Thompson* v. *Thompson*, 1 Coll. 395; for letting out land to the poor at a low rent: *Crafton* v. *Frith*, 15 Jur. 737; for the increase and encouragement of good servants: *Loscombe* v. *Wintringham*, 13 Beav. 87; are all valid charitable gifts. Private charity is not such charity as can be carried out by the Court: *Ommaney* v. *Butcher*, T. & R. 260; *Nash* v. *Morley*, 5 Beav. 177; but a bequest for "the relief of domestic distress and assisting indigent but deserving individuals" was held good: *Kendall* v. *Granger*, 5 Beav. 303. An orphan school kept by an individual at his own expense is not a charity: *Clark* v. *Taylor*, 1 Drew. 642. A legacy may be charitable, though payable immediately and not in perpetuity, as to widows and orphans: *Att.-Gen.* v. *Comber*, 2 S. & St. 93; *Russell* v. *Kellett*, 3 Sm. & Gif. 264; or "among poor pious persons, male or female, old or infirm . . . . not omitting large and sick families of good character:" *Nash* v. *Morley*, 5 Beav. 176. In an old case gifts to six Nonconformist ministers of good life and conversation, and also to six honest and sober clergymen who should respectively be not worth 200*l.* each, the said charities to be performed at the discretion of the testator's executor, their qualifications being duly considered, were held to be valid, charitable bequests: *Att.-Gen.* v. *Glegg*, Amb. 585. In the case of *Att.-Gen.* v. *Baxter*, 1 Vern. 248, a testator bequeathed the sum of 600*l.* to Mr. *Baxter* to be distributed by him among sixty ejected Nonconformist ministers; it was held by Lord Keeper *North*, that this was a charitable bequest, but void as such on the ground of being contrary to law and public policy. This decision was subsequently reversed, and the money was ordered to be paid out and distributed according to the will: see *S. C.*, sub. nom. *Att.-Gen* v. *Hughes*, 2 Vern. 105. "The decree was reversed, not upon anything contradicting the general principle reported to have been stated, but because [it was] really a legacy to sixty particular ejected ministers to be named by *Baxter*, and [the same] as a legacy to those sixty

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individuals:" note of Lord *Hardwicke*, C., on the last case, cit. 1 Ves. sen. 537 n.; 7 Ves. 76. So in *Thomas* v. *Howell*, L. R., 18 Eq. at p. 207, *Malins*, V.-C., held that a gift "to each of ten poor clergymen of the Church of England to be selected by O," was not a charitable bequest, but a gift to individuals, and consequently one which might be paid out of impure personalty.

Poor relations.

A gift to my "poorest relations" (*Att.-Gen.* v. *Price*, 17 Ves. 371), or "amongst my poor kinsmen and kinswomen and their offspring and issue" (*Isaac* v. *Dé Tries*, Amb. 595), or to "the lineal descendants of R. W. as they may severally need" (*Gillam* v. *Taylor*, L. R. 16 Eq. 581, and the cases there collected), are charitable gifts; and "poorest" means actually poor, not the least rich of a rich class of relations: *Att.-Gen.* v. *Duke of Northumberland*, 7 Ch. D. 745. There seems to be a distinction, however, between a gift in perpetuity to poor relations, which is a charity, and a legacy immediately payable to poor relations, in which case the legacy will go to the next of kin, or such of them as are poor: *Brumden* v. *Woolridge*, Amb. 507; *Att.-Gen.* v. *Duke of Northumberland*, 7 Ch. D. 745. But where a legacy was given to "poor relations or such other objects of charity as the testator should mention," it was held a charitable gift, and not a gift to the next of kin: *Mahon* v. *Savage*, 1 Sch. & L. 111.

Religion.

The advancement of religion seems to have been somewhat gratuitously imported into the interpretation of the statute, but it is now well established that religious uses, unless contrary to morality, are charitable independent of sect: *Att.-Gen.* v. *Pearson*, 3 Mer. 353, 396, 410. So that even a trust to propagate the sacred writings of Johanna Southcott" was held good: *Thornton* v. *Howe*, 31 Beav. 14. But in order to be charitable, the religious purposes must tend directly or indirectly towards the instruction or the edification of the public, and must not merely be contemplative or devotional. So a voluntary association, such as a monastery or sisterhood, for the purpose of working out the salvation of the members by religious exercises and

self-denial, has none of the requisites of a charitable institution; though if such an association has for its principal object the teaching of the ignorant, or the nursing of the sick, it is a charity. The importance of this distinction is well shown in the case of *Cocks* v. *Manners*, L. R., 12 Eq. 574. In that case, property consisting of pure and impure personalty was bequeathed equally between two religious institutions, namely, the Dominican Convent at Carisbrook and the Sisters of the Charity of St. Paul at Selby Oak; the receipts of the superiors were made respectively the discharges for the bequests; an inquiry having been directed as to the nature of these institutions, the chief clerk certified that the institution referred to as the Dominican Convent at Carisbrook was an institution consisting of Roman Catholic females living together by mutual agreement in a state of celibacy, under a common superior, for the purpose of sanctifying their own souls by prayer and pious contemplation; and also that the institution referred to as the Sisters of the Charity of St. Paul at Selby Oak was an institution composed of Roman Catholic women living together by mutual consent, and that the primary object of the congregation was the personal sanctification of its members, who, as a means thereto, employed themselves in the exercise of works of piety and charity, principally in teaching the children of the poor and nursing the sick. It was held that the bequest to the Dominican Convent was not within the stat. 43 Eliz. c. 4, and was accordingly valid both as to the pure and impure personalty, but that the bequest to the Sisters of the Charity of St. Paul was a charitable bequest, and accordingly valid only as to the pure personalty. See also *Re Delaney's Estate*, 9 L.R., Ir. 226; *Morrow* v. *McConville*, 11 L. R., Ir. 236, both of which decisions were founded on the distinction referred to.

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A gift to provide an annuity for a minister to preach a sermon is a charitable use: *Durour* v. *Motteux*, 1 Ves. 320; and so also is a gift for the support of the choir of a church: *Turner* v. *Ogden*, 1 Cox, 316.

Maintenance of ministers, &c.

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Protestant dissenters.

Gifts for the endowment of places of worship, or the support of ministers of all non-conforming denominations (unless their tenets or practice are prohibited by law), are charitable uses within the Statute of Elizabeth. Thus bequests of pure personalty for such purposes have been held valid in the case of Unitarians: *Shrewsbury* v. *Hornbury*, 5 Ha. 406; *Att.-Gen* v. *Pearson*, 3 Mer. 353; Irvingites: *Att.-Gen.* v. *Lawes*, 8 Ha. 32; Baptists: *Att.-Gen.* v. *Cook*, 2 Ves. 273; and other bodies of Protestant dissenters: *Grieves* v. *Case*, 1 Ves. jun. 548; *Thornber* v. *Wilson*, 3 Drew. 245; 4 *ib.* 350. See also *Att.-Gen.* v. *Hickman*, 2 Eq. Ab. 193; *West* v. *Shuttleworth*, 2 My. & K. 684; *Re Barnett*, 29 L. J., Ch. 871; *Biscoe* v. *Jackson*, 46 L. T. 355.

Roman Catholics.

Formerly bequests for the purpose of educating children in, or to maintain priests of, or otherwise to propagate the Roman Catholic faith, were wholly unlawful: *Cary* v. *Abbott*, 7 Ves. 490; *Gates and Jones's Case*, cit. 2 Vern. 266. But by the stat. 2 & 3 Will. 4, c. 115, s. 1, Roman Catholics, "in respect of their schools, places of religious worship, education, and charitable purposes in Great Britain, and the property held therewith," were placed on the same footing as Protestant dissenters, "and not further or otherwise." It has been held that a bequest of a sum of money to an individual to be applied for the use of Roman Catholic priests in and near London at his discretion, was a valid charitable legacy: *Att.-Gen.* v. *Gladstone*, 13 Sim. 7. See also *Bradshaw* v. *Tasker*, 2 My. & K. 221. This statute does not, however, affect gifts to superstitious uses, such as legacies to priests to pray for the soul of the donor, which are illegal as being within the mischief of the stat. 1 Ed. 6, c. 14: *West* v. *Shuttleworth*, 2 My. & K. 684: see also *Kehoe* v. *Wilson*, 7 L. R., Ir. 10; *Morrow* v. *McConville*, 11 L. R., Ir. 236. But by the stat. 23 & 24 Vict. c. 134, s. 1, it is provided that gifts for lawful charitable purposes for the benefit of Roman Catholics, are not to be invalidated by the addition of illegal trusts, but that the property may be apportioned, and first applied to the lawful trusts

declared by the donor, and the residue applied to such lawful charitable trusts for the benefit of Roman Catholics as the Court may direct, in lieu of the prohibited trusts. What is Charity.

By the stat. 9 & 10 Vict. c. 59, Jews are made subject to the same laws as Protestant Dissenters "in respect to their schools, places of religious worship, education, and charitable purposes, and the property held therewith." Jews.

The erection of an organ gallery in a church is a good charitable use: *Adnam* v. *Cole*, 6 Beav. 353; so also a gift for keeping up an organ, and paying the organist's stipend: *Att.-Gen.* v. *Oakover*, cit. 1 Ves. sen. 536. And it has been held that keeping the chimes in repair and tune comes under the head of repair of churches mentioned in the statute of Elizabeth: *Turner* v. *Ogden*, 1 Cox, 316. So also a gift to keep up the chancel (*q*) in a church is a valid charitable use: *Hoare* v. *Osborne*, L. R. 1 Eq. 585. So also a gift for adorning a church: *Att.-Gen.* v. *Ruper*, 2 P. Wms. 125. And the repair of a monument in a church, being part of the ornaments of the church, is a good charitable purpose: *Hoare* v. *Osborne*, L. R., 1 Eq. 585. But gifts for the repair of tombs or monuments and vaults outside churches do not fall within this category, and have consequently been repeatedly held to be void as coming within the rule against perpetuities: *Adnam* v. *Cole*, 6 Beav. 353; *Willis* v. *Brown*, 2 Jur. 987; *Hoare* v. *Osborne*, L. R., 1 Eq. 585; *Re Williams*, 5 Ch. D. 735; *Re Birkett*, 9 Ch. D. 576. See also generally as to gifts for purposes of a religious nature: *Att.-Gen.* v. *City of London*, 1 Ves. jun. 243; *Powerscourt* v. *Powerscourt*, 1 Moll. 616; *Att.-Gen.* v. *Stepney*, 10 Ves. 22; *Baker* v. *Sutton*, 1 Keen, 224; *Townsend* v. *Carns*, 3 Ha. 257; *Sewell* v. *Crewe Read*, L. R., 3 Eq. 60; *Booth* v. *Carter*, *ibid.* 757; *Cresswell* v. *Cresswell*, L. R., 6 Eq. 69; *Re Watmough's Trusts*, Repairs of church. General religious purposes.

(*q*) It is the duty of the churchwardens to keep the chancel in repair, but the lay impropriator or owner of the great tithes is liable for the cost of repairs: 1 Burn, Eccl. Law, 352.

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L. R., 8 Eq. 272; *Hawkins* v. *Allen*, L. R., 10 Eq. 246; *Pratt* v. *Harvey*, L. R., 12 Eq. 544; *Sinnett* v. *Herbert*, L. R., 7 Ch. 232.

Education and advancement of learning.

The stat. 43 Eliz. c. 4, enumerates, among charitable purposes, the providing and maintaining of "schools of learning;" and education and the advancement of learning have always been regarded as the proper subjects of charitable trusts. So a trust for "the *relief* of the poor" has been held to authorise the application of part of the fund to the building of a school-house, and to the education of the children of the poor: *Wilkinson* v. *Malin*, 2 Tyr. 544. And a gift for the advancement of learning will be charitable, even though the poor be not its object: "The institution of a school for the sons of gentlemen is not, in popular language, a charity; but in the view of the Statute of Elizabeth all schools of learning are so to be considered:" per *Leach*, V.-C., in *Att.-Gen.* v. *Earl of Lonsdale*, 1 Sim. at p. 109. So a gift to trustees upon trust at their discretion to apply the property for the benefit, "advancement, and propagation of education and learning in every part of the world," was held to be good charitable gift: *Whicker* v. *Hume*, 7 H. & C. 124.

Public purposes generally.

Among charitable purposes are also included various other purposes of public utility and benefit. Thus gifts for the erection or endowment of hospitals have been held to be charitable: *Pelham* v. *Anderson*, 2 Ed. 296; *Att.-Gen.* v. *Kells*, 2 Beav. 575; so also a gift for founding, establishing, and upholding an institution for studying and endeavouring to cure maladies of quadrupeds or birds useful to man: *University of London* v. *Yarrow*, 1 De G. & J. 72. The following purposes of a public nature have also been held to be charitable:—the erection of waterworks for the use of the inhabitants of a town: *Jones* v. *Williams*, Amb. 651; and that notwithstanding that the local authorities have power to levy rates for the purpose: *Att.-Gen.* v. *Eastlake*, 11 Ha. 205; the general improvement of a town or other locality: *Howse* v. *Chapman*, 4 Ves. 542; *Att.-Gen.* v. *Heelis*, 2 S. & St. 67; *Mitford* v. *Reynolds*, 1 Phil. 185; the laying out of public botanical gar-

dens: *Townley* v. *Bedwell*, 6 Ves. 194; the establishment of a life-boat: *Johnson* v. *Swan*, 3 Mad. 457; the maintenance and repair of the bulwarks, fortifications, and munitions of a town: *Att.-Gen.* v. *Mayor of Dartmouth*, 48 L. T. 933. So a devise to the British Museum was held to be a charitable use within the Statute of Mortmain: *Trustees of the British Museum* v. *White*, 2 S. & St. 594. And a bequest of a collection of works of art to found an art museum at Bath, and of a sum of money to trustees for maintaining the collection, was upheld as a valid charitable gift, it appearing that the testator intended the museum to be kept up as a public institution for the benefit of the inhabitants of the city: *Re Holbourne*, 53 L. T. 212. **What is Charity.**

But a purpose, to be charitable, must be for the public benefit. So a gift to found a private museum is not charitable: *Thompson* v. *Shakespeare*, 1 Johns. 612; *Carne* v. *Long*, 29 L. J., Ch. 503. Nor is a gift to a Mechanics' Institute: *Re Sheraton's Trusts*, W. N., 1884, p. 175; nor a gift to a harmonic society for the practice of choral singing and performance of musical works, supported by subscriptions of members and receipts of concerts: *Re Allsop's Estate*, *ibid.* p. 196. A gift to one of the chartered companies of the City of London "for the increase of their stock of corn for the service of the market of London," was held not to be charitable, being in effect a donation for the benefit of the company and its revenues: *Att.-Gen.* v. *Haberdashers' Co.*, 1 My. & K. 420. **Objects not charitable.**

Where a testatrix declared, as to certain money, that she wished "it to be given to private charity," Sir T. *Plumer*, M.R., held that the words did not create a trust which could be carried into effect. The charities recognised by the Court were public in their nature, and such as the Court could see to the execution of; but here, the disposition was confined to private charity. Assisting individuals in distress was private charity; but such a purpose could not be executed by the Court or by the Crown: *Ommaney* v. *Butcher*, T. & R. 260. **Private charity.**

Where land was devised to trustees upon trust, to

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distribute the rents and profits among certain named families according to their circumstances, as in the opinion of the trustees they might need assistance: it was held that the gift was not charitable within the Statute of Mortmain, but merely a beneficial devise to specified individuals: *Siley* v. *Hey*, 1 Ha. 580.

6. As to Deeds of Endowment and Trustees of Charities.

Frame of endowment deeds.

The trusts and provisions proper to be inserted in conveyances and other deeds relating to charitable purposes will of course vary according to the nature of the particular purpose. Some considerations will be here suggested, which may be useful to be borne in mind in framing conveyances and declarations of trust for the endowment of religious, educational, and other charitable institutions.

Churches and parishes.

A person desirous of creating a trust for the benefit of a church or parish is at liberty to select such persons as he thinks fit to be the trustees thereof, and to make provision for the appointment of new trustees on vacancies by death, resignation, &c., and may effectually vest the property given by him in such express trustees: *Anon.*, 2 Vent. 349; *Churchwardens of Deptford* v. *Sketchley*, 8 Q. B. 394; see also *Gouldsworth* v. *Knight*, 11 M. & W. 337.

In the absence of such selection or provision, the Compulsory Church Rate Abolition Act, 1868 (31 & 32 Vict. c. 109), sect. 9, enacts that:—

Power to appoint Church Trustees.

"A body of trustees may be appointed in any parish for the purpose of accepting by bequest, donation, contract, or otherwise, and of holding any contributions which may be given to them for ecclesiastical purposes in the parish (*r*). The trustees shall consist of the incumbent and two householders or owners or occupiers of land in the parish, to be chosen, in the first instance, and also from time to time on any vacancy in the office by death, incapacity, or resignation, one by the patron, and the other by the bishop of the

(*r*) By sect. 10 of the Act, "ecclesiastical purposes shall mean the building, rebuilding, enlargement, and repair of any church or chapel, and any purpose to which by common or ecclesiastical law a church-rate is applicable."

diocese in which the parish is situate. The trustees shall be a body corporate by the name of the Church Trustees of the parish to which they belong, having a perpetual succession and a common seal, with power to sue and be sued in their corporate name. The trustees may from time to time, as circumstances may require, pay over to the churchwardens, to be applied by them either to the general ecclesiastical purposes of the parish, or to any specific ecclesiastical purposes of the parish, any funds in their hands, and the funds so paid over may be applied to such purposes, and shall not be applied to any other purpose: Provided always that no power shall be thereby conferred on the churchwardens to take order with regard to the ecclesiastical purposes of the parish further or otherwise than they are now by law entitled to do: Provided, also, that due regard shall be had to the directions of the donors of funds contributed for any special ecclesiastical purposes; and subject as aforesaid the trustees may invest in government or real securities any funds in their hands, and accumulate the income thereof, or otherwise deal with such funds as they think expedient, subject to the provisions of this Act. The incumbent shall be the chairman of the trustees. The trustees shall once at the least in every year lay before the vestry an account of their receipts and expenditure during the preceding year, and of the mode in which such receipts have been derived and expenditure incurred, together with a statement of the amount, if any, of funds remaining in their hands at the date of such account."

Endowments and Trustees of Charities.

All property given for the benefit of a parish, unless vested in trustees expressly appointed by the donor, or in "Church Trustees" for ecclesiastical purposes, now vests by virtue of the stat. 59 Geo. 3, c. 12, in the churchwardens and overseers of the parish, as a *quasi* corporation (*s*). This rule will apply where express trustees were originally appointed, but it is not certain in whom the legal estate is vested: *Doe* v. *Hiley*, 10 B. & C. 885; see also *Doe* v. *Terry*, 4 A. & E. 274; *Doe* v. *Cockell*, ibid. 478.

Churchwardens and overseers.

Where property is given in trust for the "poor of a parish," it is now settled that in the absence of any provision to the contrary in the instrument creating the trust, the benefit will be confined to

Trust for poor of parish.

(*s*) See as to the nature of the *status* of the churchwardens and overseers of a parish, *Ex parte Annesley*, 2 Y. & C. 350; *Smith* v. *Adkins*, 8 M. & W. 362.

Endowments and Trustees of Charities.

such poor parishioners as are not in receipt of parochial relief: *Att.-Gen.* v. *Wilkinson,* 1 Beav. 372; *Att.-Gen.* v. *Blizard,* 21 Beav. 233. So where a trust was created for the relief of "poor citizens who often were grievously burdened by the imposts and taxes of the city" of Exeter, it was held that the funds ought not to be applied either to the payment for public purposes the expenses of which would properly fall on the rates, nor in support of poor who were in receipt of parish relief, both of which modes of application would be in aid of the rich by reducing the rates; but ought to be applied to the relief of poor inhabitants of Exeter not receiving parish relief: *Att.-Gen.* v. *Corp. of Exeter,* 2 Russ. 45; *S. C.,* 3 Russ. 395.

Trusts for religious purposes.

Where property is given for purposes of religion the instrument of trust should expressly state what form of religious worship or doctrine the donor desires to maintain. If the trust is general in its terms, *e. g.,* "for the worship of God," the Court will generally execute it in favour of the Established Church: *Att.-Gen.* v. *Pearson,* 3 Mer. at p. 409. So also where lands were conveyed to trustees upon trust to maintain a school for "the virtuous education of youth in literature and godly learning," it was held that dissenters could not be appointed trustees: *Re Ilminster School,* 2 De G. & J. 535; *S. C.,* sub nom. *Baker* v. *Lee,* 8 H. & C. 495; see *Re Stafford Charities,* 25 Beav. 28: see also *Att.-Gen.* v. *Clifton,* 32 Beav. 596, where it was held that though the trustees must in the case of a general trust for godly learning be members of the Established Church, it did not follow that children of dissenters might be properly excluded, nor even that the mastership must be held by a member of the Established Church. If the donor's intention to confine his benefits to a particular religious denomination can be clearly ascertained by the express terms of the instrument creating the trust, or by reference therein to some book or other document, the Court will carry out his wishes, and will not allow the nature of the institution to be changed by reason of any usage or decision or wishes of a

Intention of donor to be carried out.

Endowments and Trustees of Charities.

majority of the congregation, or of the trustees to the contrary: *Att.-Gen.* v. *Pearson*, 3 Mer. at p. 400; *Foley* v. *Wontner*, 2 J. & W. 247; *Att.-Gen.* v. *Murdock*, 1 De G., M. & G. 86; *Att.-Gen.* v. *Munro*, 2 De. G. & Sm. 122; *Att.-Gen.* v. *Corp. of Rochester*, 5 De G., M. & G. 797. But if the donor's intention cannot be so ascertained, the Court will enquire into the usage of the congregation as evidence of such intention: see *Att.-Gen.* v. *Hutton*, Dru. 530; and by the stat. 7 & 8 Vict. c. 45, sect. 2, twenty-five years' usage previous to any suit is made conclusive evidence of the intention. In the case of Roman Catholic charities where the original trusts cannot be ascertained, twenty years' consistent usage is conclusive evidence: see stat. 23 & 24 Vict. c. 134, s. 5.

Evidence of usage.

Where the contributors to an endowment fund were very numerous, a declaration of trust executed only by the original trustees was held to be sufficient evidence of the intentions of the contributors: *Att.-Gen.* v. *Clapham*, 4 De G., M. & G. 626.

Declaration of trust.

An advowson cannot at law be conveyed to a parish not being a corporate body, but it may be vested in trustees for the benefit of the parishioners and inhabitants of the parish: *Edenborough* v. *Archbishop of Canterbury*, 2 Russ. 93; see also *Fearon* v. *Webb*, 14 Ves. 19 (*t*). Such a trust stands on a somewhat anomalous footing; it is not strictly speaking a charitable trust (see *Att.-Gen.* v. *Forster*, 10 Ves. 335; *Att.-Gen.* v. *Newcombe*, 14 Ves. 1), and trusts in perpetuity of property in favour of a parish can only be upheld on the ground of their falling within that category; trusts of advowsons are held to be valid on the ground that the parishioners gain no personal benefit, but merely the right of nominating the incumbent, who is, in a sense, a trustee for the purpose of providing for the spiritual wants of the parish which is, as has been seen, a charitable purpose: see *Att.-Gen.* v. *Webster*, L. R., 20 Eq. at p. 491.

Advowson.

(*t*) The stat. 19 & 20 Vict. c. 50, authorises the sale of advowsons to be held in trust for the parishioners.

Endowments and Trustees of Charities.

Appointment of incumbent.

In the absence of express provision in the instrument creating the trust, or proof of usage to the contrary, the power of appointing the incumbent will vest in the trustees: *Edenborough* v. *Archbishop of Canterbury*, 2 Russ. at p. 106; *Att.-Gen.* v. *Scott*, 1 Ves. 413 (*u*). But the Court will, if the trust deed so directs, or if usage is proved, uphold an election by the parishioners, and require the trustees to present to the living the person so elected: *Att.-Gen.* v. *Parker*, 3 Atk. 577; *Att.-Gen.* v. *Forster*, 10 Ves. 335; *Att.-Gen.* v. *Newcombe*, 14 Ves. at p. 6. If the trust deed gives the right of election simply to the parishioners and inhabitants, the right will generally be confined to ratepayers (*x*), not being under any disability by reason of infancy, coverture, or receipt of parish relief: *Att.-Gen.* v. *Davy*, 2 Atk. 213; *Fearon* v. *Webb*, 14 Ves. 335; *Edenborough* v. *Archbishop of Canterbury*, 2 Russ. 93; *Att.-Gen.* v. *Rutter*, ibid. 101, n.; but on proof of usage to the contrary the right may be extended to the householders generally: *Att.-Gen.* v. *Parker*, 3 Atk. 557. It was formerly held that the mode of election must be by show of hands or by a poll, and not by ballot: *Faulkner* v. *Elger*, 4 B. & C. 449; *Edenborough* v. *Archbishop of Canterbury*, 2 Russ. at p. 105 *et seq.*; but in *Shaw* v. *Thompson* (3 Ch. Ch. D. at p. 253), *Bacon*, V.-C., observed that voting by ballot was now a common practice, and intimated his opinion that under proper regulations a vote by ballot, if duly resolved upon, would be valid.

Chapels.

The foundation of a chapel cannot be effected by

Proxies.

(*u*) Trustees, unless expressly authorized by the trust deed, must not vote by proxy at an election of an incumbent: *Att.-Gen.* v. *Scott, supra*; *Wilson* v. *Dennison*, Amb. 82.

Surviving trustees.

As to the right of the survivors or survivor of several trustees of an advowson to present to the benefice, see *Att.-Gen.* v. *Bishop of Litchfield*, 5 Ves. 852; *Att.-Gen.* v. *Cuming*, 2 Y. & C. C. C. 139.

(*x*) Formerly the payment of or liability to church rates as well as poor rates was a necessary qualification: *Att.-Gen.* v. *Parker*, 3 Atk. 557; *Att.-Gen.* v. *Forster*, 10 Ves. 335. But since the Compulsory Church Rates Abolition Act, 1868 (31 & 32 Vict. c. 109), it would seem that a voter would be duly qualified if rated for the relief of the poor.

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conveying the land and buildings to the minister and his successors, they not being a body corporate, but the legal estate may be, and usually is, in such cases, vested in trustees, with power to fill up vacancies in their number, upon trust to permit the minister and congregation for the time being to have the use of the premises for the purposes of a chapel: see Lewin on Trusts, p. 85. The minister for the time being will be at law a tenant at will of the trustees: *Doe* v. *Jones*, 10 B. & C. 718; *Perry* v. *Shipway*, 1 Giff. 10. But the Court has an equitable jurisdiction to interfere in cases of capricious removal of a minister: *Foley* v. *Wontner*, 2 J. & W. 247; *Dean* v. *Bennett*, L. R., 6 Ch. A. 489.

Appointment of new trustees.

The trust deed should expressly mention who is to be entitled to appoint new trustees and the minister, whether the trustees or the congregation are to exercise those powers; in the latter case the majority of the congregation will be entitled to appoint: *Davis* v. *Jenkins*, 3 Ves. & B. 151. Due notice of the meeting of the congregation for the purpose must be given: *Perry* v. *Shipway*, 4 De G. & J. 353. In the absence of express provision in the deed, when freehold, leasehold, copyhold, or customary property is acquired by a congregation, the power of appointing new trustees is given to the "Society" by Sir M. *Peto's* Act (13 & 14 Vict. c. 28): but it seems doubtful whether such appointment gives to the persons so appointed any of the powers of the original trustees, or does more than vest in them the legal estate in the property: see Lewin on Trusts, p. 853; and see *ante*, Vol. II., p. 60, note. The Conveyancing and Law of Property Act, 1881 (45 & 46 Vict. c. 41), sect. 31, provides that where no person is nominated for the purpose by the instrument creating the trust, "the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee," may appoint new trustees. But such persons will not be entitled to appoint the minister; otherwise the power of appointment might fall to one person, perhaps not of the same persuasion:

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in such a case the Court will direct an inquiry as to who are the proper persons to appoint, having regard to the circumstances: *Davis* v. *Jenkins*, 3 Ves. & B. at p. 154.

Stat. 35 & 36 Vict. c. 24.

The Charitable Trustees Corporation Act, 1872, sect. 1, provides that, from the date of the Act, the trustees or trustee for the time being of any charity may apply to the Charity Commissioners for a certificate of registration, and the Commissioners may grant such certificate, subject to such conditions and directions as they may think fit as to the qualifications and number of the trustees, their tenure or avoidance of office and the mode of appointing new trustees, and the custody and use of the common seal; and thereupon the trustees shall become a body corporate by the name described in the certificate, and may sue and be sued in their corporate name, and hold, acquire, convey, assign, and demise any present or future property of the charity as the trustees might have done before the incorporation. But the Act is not to extend, modify, or control the Mortmain Act. By sect. 2, the certificate of incorporation is to vest in the body corporate all the real and personal estate belonging to the charity, or held in trust for it; and persons in whose names any stocks, funds or securities are standing in trust for the charity are to transfer the same into the body corporate; but if such property be copyhold, liable to the payment of a fine or heriot on the death or alienation of the tenant, the lord of the manor shall receive a corresponding fine or heriot on the granting of the certificate, and a like fine or heriot at the expiration of every subsequent period of forty years. But the certificate is not to vest in the body corporate any stocks, funds, or securities held by the official trustees of charitable funds, which are not to be transferable except under an order of the Commissioners, and by ordinary transfer or assignment. By the 4th sect. the Commissioners are to see that proper trustees have been appointed before they grant the certificate, and after the grant the trusteeship is to be duly kept up, and a return of the names of the trustees is to be made at the expiration of every five

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years. By sect. 5 the trustees of the charity, notwithstanding their incorporation, are to continue chargeable for such property as shall come to their hands, and be answerable for their own acts, receipts, neglects, and defaults, and for the due administration of the charity. By sect. 10, donations and dispositions in favour of the charity by deed, will, or otherwise, are to take effect as if the same had been made to the charity by its corporate name. And by sect. 11, contracts by the trustees of a charity which would have been valid and binding if no incorporation had taken place, are to be valid and binding though not made under the seal of the body corporate.

Bye-laws.

Endowment deeds often contain powers for the trustees or a committee to frame bye-laws for the administration of the trust. But in the absence of such express powers the trustees may make bye-laws to regulate the charity, provided they be consistent with the provisions and objects of the trust: *Eden* v. *Forster*, 2 P. Wms. at p. 327. Such bye-laws must not, however, extend beyond details of management. The constitution or object of the charity cannot be altered, except by a special Act of Parliament: *Att.-Gen.* v. *Market Bosworth School*, 35 Beav. 305; or by a scheme duly approved by the Charity Commissioners (*y*), and sanctioned by parliament under the stat. 16 & 17 Vict. c. 137, ss. 54—60: see *Att.-Gen.* v. *Mayor of Rochester*, 2 Sim. 34.

Alienation of charity lands.

Trustees of charities may not, as a general rule, alienate the charity lands either absolutely: see *Att.-Gen.* v. *Kerr*, 2 Beav. 420; *Att.-Gen.* v. *Magdalen College*, 18 Beav. 223; or for long terms of years: *Att.-Gen.* v. *Pargetor*, 6 Beav. 150. The Charity Commissioners may, however, upon the application of the trustees or persons acting in the administration of a charity, under special circumstances authorise sales and exchanges of charity lands, and give directions in relation thereto, and as to the investment of moneys arising from sales, &c.: 16 & 17

(*y*) By the stat. 37 & 38 Vict. c. 87, the powers of the late Endowed Schools Commissioners are transferred to the Charity Commissioners.

Endowed schools.

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16 & 17. Vict. c. 137, s. 24; and they may authorise payments out of the charity funds for equality of exchange or partition: 18 & 19 Vict. c. 124, s. 32. And by sect. 29 of this Act, it is enacted that:—

Restrictions on sales, charges, and leases of charity estates (z).

"It shall not be lawful for the trustees or persons acting in the administration of any charity to make or grant, otherwise than by the express authority of parliament, under any Act already passed or hereafter to be passed, or of a court or judge of competent jurisdiction, or according to a scheme legally established, or with the approval of the board, any sale, mortgage, or charge of the charity estate, or of any lease thereof in reversion after more than three years of any existing term, or for any term of life, or in consideration wholly or in part of any fine, or for any term of years exceeding twenty-one years."

By the stat. 32 & 33 Vict. c. 110, s. 12, it is enacted that:—

Power of majority to bind minority in dealing with property of charity (a).

"Where the trustees or persons acting in the administration of any charity have the power to determine on any sale, exchange, partition, mortgage, lease, or other disposition of any property of the charity, a majority of those trustees or persons who are present at a meeting of their body duly constituted, and vote on the question, shall have and be deemed to have always had full power to execute and do all such assurances, acts and things as may be requisite for carrying any such sale, exchange, partition, mortgage, lease, or disposition into effect; and all such assurances, acts and things shall have the same effect as if they were respectively executed and done by all such trustees or persons for the time being, and by the official trustee of charity lands."

Trustees of charities, like other persons in a fiduciary position, must not lease the lands to one of themselves: *Att.-Gen.* v. *Dixie*, 13 Ves. 519; *Att.-Gen.* v. *Earl of Clarendon*, 17 Ves. 491; see *Passingham* v. *Sherborn*, 9 Beav. 424. And leases by charity trustees to a relative of one of their number are

(z) Roman Catholic charities are now subject to the operation of the Charitable Trusts Acts, the last Act extending their exemption therefrom (the stat. 22 & 23 Vict. c. 50) having expired on the 1st July, 1860.

(a) The stat. 23 & 24 Vict. c. 136, s. 16, enabled a majority of two-thirds of the trustees duly assembled at a meeting and having power to determine on any sale, &c., to pass the legal estate so as to give effect to the disposition.

regarded with grave suspicion: *Ferraby* v. *Hobson*, 2 Ph. 261. See also *ante*, tit. LEASES, Vol. III. p. 95.

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Investments.]—Trustees of charities may invest accumulations or other capital moneys in the purchase of land, if authorized so to do by the instrument creating the trust, but otherwise the Court will not as a general rule sanction such a mode of investment: *Vaughan* v. *Farrer*, 2 Ves. at p. 188; see *Att.-Gen.* v. *Wilson*, 2 Keen, 680. But under special circumstances, as where it was desired to carry out a scheme for enlarging a school, the Court has directed charity funds to be invested in the purchase of lands for the purpose of erecting additional buildings thereon: *Att.-Gen.* v. *Earl of Mansfield*, 14 Sim. 601. Unless the land is already in mortmain, of course the conveyance must be in accordance with the formalities required by the Mortmain Act; see *ante*, p. 4.

Purchase of land.

By the stat. 33 & 34 Vict. c. 34, corporations and trustees holding money in trust for any public or charitable purpose may invest the same on any real security authorised by or consistent with the trust; and contracts and conveyances for the purpose only of such securities are exempted from the requirements of the Mortmain Act.

Mortgage.

By the stat. 16 & 17 Vict. c. 137, s. 21, the commissioners may sanction building leases of, and working mines, and doing repairs and improvements on, the charity estates; and may authorise the application of the charity funds on the raising of money on mortgage for those purposes.

Improvements.

Where charity lands had been compulsorily taken under the Lands Clauses Act, and the purchase-money paid into Court, it was held by *Fry*, J., that the money could be dealt with as "money liable to be laid out in the purchase of land to be made subject to a settlement," under sect. 32 of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), and it was accordingly directed that the money should be invested *ad interim* in debenture stock of a railway company: *Re Byron's Charity*, 23 Ch. D. 171.

Settled Land Act, 1882.

7. Jurisdiction of the Court and of the Charity Commissioners with regard to Schemes for the Administration of Charitable and Public Trusts.

Romilly's Act.

Jurisdiction of the Court.]—This subject will be here very briefly noticed. By Sir S. *Romilly's* Act (52 Geo. 3, c. 101), entitled "An Act to provide a Summary remedy in Cases of Abuses of Trusts created for Charitable Purposes," it is enacted that:—

In cases of breach of a charitable trust, &c., a petition may be presented to the Lord Chancellor, &c., who shall hear the same in a summary

Sect. 1. "In every case of a breach of any trust created for charitable purposes, or whenever the direction or order of a Court in equity should be deemed necessary for the administration of any trust for charitable purposes, it shall be lawful for any two or more persons (*a*) to present a petition to the lord chancellor, lord keeper, or lords commissioners for the custody of the great seal, or master of the rolls for the time being, or to the Court of Exchequer (*b*), stating such complaint and praying such relief as

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(*a*) The persons must have a clear interest in the matter: *Re Bedford Charity*, 2 Swanst. 518; *Corp. of Ludlow* v. *Greenhouse*, 1 Bli., N. S. 91.

Jurisdiction of Chancery Division.

(*b*) The execution of charitable trusts is now assigned to the Chancery Division of the High Court of Justice: see sect. 34 of the Judicature Act, 1873 (36 & 37 Vict. c. 66). As to procedure in cases relating to charitable trusts, see Daniell, Chan. Practice, 2049 *et seq.*, and Daniell, Chan. Forms, 1151 *et seq.*; see also Seton, 550 *et seq.*

By the Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), sect. 32, the county courts have jurisdiction in cases of charities, the gross annual income of which does not exceed 30*l.*; and this jurisdiction has been enlarged so as to extend to cases where such income does not exceed 50*l.*, by the Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), sect. 11. The Charity Commissioners may, however, direct an application in such cases to be made to the High Court, or as to any charity within the jurisdiction of the Court of Chancery of the Palatine County of Lancaster, either to that Court or to the High Court, instead of to a County Court: stat. 16 & 17 Vict. c. 137, s. 35. And no order or decision of a County Court for the appointment or removal of a trustee or approving a scheme for regulating the administration of a charity or its property is valid, until approved by the Charity Commissioners, who if dissatisfied therewith may either remit the case to the County Court, or submit it to a judge of the High Court: *ibid.* sect. 36.

The procedure of the County Courts with regard to charitable trusts is regulated by Ord. XLVIII. of the County Court Rules, 1886; and Forms are given in Appendix H. to those rules, Forms 338—346: see Heywood's County Court Practice, pp. 645, 821.

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the nature of the case may require; and it shall be lawful for the lord chancellor, &c., and they are hereby required to hear such petition in a summary way, and upon affidavits or such other evidence as shall be produced upon such hearing to determine the same and to make such order therein, and with respect to the costs of such application as to him or them shall seem just; and such order shall be final and conclusive, unless the party or parties, who shall think himself or themselves aggrieved thereby, shall, within two years from the time when such order shall have been passed and entered by the proper officer, have preferred an appeal from such division to the House of Lords, to whom it is hereby enacted and declared that an appeal shall lie from such order."

way, and make order therein.

Appeal to the House of Lords.

Petitions to be signed, &c.

Sect. 2 of the same Act provides that such petitions are to be signed by the petitioners, attested by their solicitors, and certified by the Attorney-General. And by sect. 3 proceedings under the Act are exempted from stamp duty.

Effect of the Act.

For instances where an order of the Court has been "deemed necessary for the administration of a charitable trust," see *Ex parte Rees*, 3 Ves. & B. 12; *Re Clarke's Charity*, 8 Sim. 34; *Re Phillipott's Charity*, *ibid.* 381; *Re Parke's Charity*, 12 Sim. 332; *Re Upton Warren*, 1 My. & K. 410; *Re Hall's Charity*, 14 Beav. 115; *Re Manchester New College*, 16 Beav. 610. The operation of the Act extends only to simple cases of abuse of a trust, or where the advice or direction of the Court is desired as to the conduct of the trust: *Corporation of Ludlow* v. *Greenhouse*, 1 Bli., N. S. 17; *Ex parte Skinner*, 2 Mer. 456; *Re Phillipott's Charity*, 8 Sim. 381.

Jurisdiction as to schemes, &c.

The Court has jurisdiction under the Act to settle schemes for the future management of the charity, and administration of its property: *Re Berkhampstead Free School*, 2 Ves. & B. 134; *Rugby School Case*, 1 Beav. 457; *Re Royston Free Grammar School*, 2 Beav. 228; *Re Shrewsbury Grammar School*, 1 Mac. & G. 324. And the Court may alter a scheme previously settled on petition under this Act: *Att.-Gen.* v. *Earl of Stamford*, 1 Phil. 749; *Att.-Gen.* v. *Bishop of Worcester*, 9 Ha. 328; *Att.-Gen.* v. *St. John's Hospital*, L. R., 1 Ch. D. 92. The Court can, however, under this Act only settle schemes intended to regulate existing charities, and

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not schemes for diverting the funds to some other charitable purpose: *Re Reading Dispensary*, 10 Sim. 118. So also the Court may, under this Act, make orders appointing new trustees: *Bignold* v. *Springfield*, 7 Cl. & F. 71; or apportioning parochial charitable property on a division of a parish into districts: *Re West Ham Charities*, 2 De G. & S. 218; or for the exchange of charity property: *Mildmay* v. *Lord Methuen*, cit. 14 Beav. at p. 121 n.; or, in a proper case, for sale of the charity estate: *Re Parke's Charity*, 12 Sim. 329; *Re Overseers of Eccleshall*, 16 Beav. 297; *Re Ashton Charity*, 22 Beav. 288. But the Act does not give the Court jurisdiction to adjudicate under its provisions upon questions or claims which are disputed or contested: *Ex parte Rees*, 3 Ves. & B. 10; *Re West Retford Church, &c., Lands*, 10 Sim. 101; *Att.-Gen.* v. *Corporation of Bristol*, 14 Sim. 648; nor, generally, where the rights of third parties are involved: *Corporation of Ludlow* v. *Greenhouse*, 1 Bli., N. S. at p. 93.

Scheme where manner of application of fund is in discretion of trustees.

Independently of statutory enactment, where a fund is bequeathed to trustees upon trust to apply it for a specific object in such manner as they should think proper, the Court has power to sanction a scheme for the conduct of the trust proposed by the trustees: *Brunsden* v. *Woolredge*, Amb. 507; *Bennett* v. *Honeywood*, *ibid.* 708; *Supple* v. *Lawson*, *ibid.* 729; *Mahon* v. *Savage*, 1 Sch. & L. 111. But if the selection of the *objects* of a charitable gift is left to the trustees, the Court will not interfere with their discretion: *Waldo* v. *Coley*, 16 Ves. 206; *Horde* v. *Earl of Suffolk*, 2 My. & K. 59; *Holmes* v. *Penney*, 3 K. & J. 103.

Powers of Charity Commissioners to approve schemes.

Stat. 16 & 17 Vict. c. 137.

Schemes under the approval of the Charity Commissioners.]—Formerly, if it was desired to divert the funds of a charity to a different charitable purpose, it was necessary to apply for an Act of Parliament to carry the desire into effect. But now, by the Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), sect. 54, the Charity Commissioners are empowered, either on the application of the trustees or persons interested in the administration or benefits

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of a charity, or if it shall appear, upon an inspector's report or other information, to the Commissioners that a new scheme for the application or management of the charity, to approve provisionally and certify schemes which cannot be carried into effect otherwise than by authority of Parliament. The procedure to be followed in such cases is prescribed in sects. 55—59 of the Act, and sect. 60 provides that the Commissioners shall annually lay before parliament a report setting forth all the schemes provisionally approved, and such schemes, when confirmed by Parliament, with or without alteration or modification, are to be deemed public general Acts.

Stat. 23 & 24 Vict. c. 136.

By the Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), sect. 2, certain administrative powers over charities and the property thereof, are conferred upon the Charity Commissioners, including power, upon the application of the trustees or other persons interested, to make such orders as might have been made by a judge or court for the establishment of any scheme for the administration of the charity. The Commissioners are not, however, empowered to exercise jurisdiction over contentious cases : sect. 5 ; and by sect. 8 a right of appeal against orders of the Commissioners is given by petition in the Chancery Division.

Preparation of schemes.

By the Charitable Trusts Amendment Act, 1869 (32 & 33 Vict. c. 110), sect. 9, the Commissioners are empowered, where the income of a charity is sufficient to bear the expense, to employ, or authorise the trustees or persons acting in the administration of a charity to employ, competent persons to prepare a scheme with respect to the charity, and to order the costs to be paid out of the charity funds. But in practice, schemes, whether for the management and administration of an existing charity, or for the diversion of charity property to a different charitable purpose, are almost invariably prepared by the Commissioners themselves.

Educational endowments.

By the Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), the Endowed Schools Commissioners were empowered to make or approve schemes for the application of educational endowments. These powers

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were originally exercisable only until the 31st of December, 1873, but have been continued and extended by several subsequent Acts. And by the stat. 37 & 38 Vict. c. 87, the powers of the Endowed Schools Commissioners were transferred to, and they are now exercised by, the Charity Commissioners.

PRECEDENTS.(a)

I. *STATUTORY FORM of* GRANT *by a* LIMITED OWNER *under the* PLACES OF WORSHIP ACT, 1873 (*b*).

I [*grantor*], of, &c. [*or* WE, *grantor* of, &c., and *grantor* of, &c.], under the authority of an Act passed in the thirty-sixth Grant.

(*a*) The precedents given in this collection are of deeds conveying land or otherwise providing for the endowment of charitable and public institutions. Forms of bequests for charitable purposes will be found in a later volume of this work, sub tit. WILLS. It has not been thought worth while to insert any precedents of schemes for the alteration of existing charitable trusts. Owing to the powers vested in the Charity Commissioners of dealing with educational and charitable endowments, it is now comparatively of rare occurrence that the interference of the Court is invoked with regard to such matters. If, however, a practitioner should be instructed to prepare a scheme for the approval of the Court, he will be able to select from the clauses given in the following precedents provisions which may be adapted to the requirements of the case.

The formal parts of a scheme for the approval of the Court are as follows :— Formal parts of scheme for approval of the Court.

In the High Court of Justice,
Chancery Division.
[*Name of judge.*]

IN THE MATTER of the —— Charity; and of the Charitable Trusts Acts, 1853 to 1869.

PROPOSED SCHEME for the regulation and management of the above-mentioned charity, and the estates, funds, and property thereof.

The various clauses should be set out in paragraphs numbered 1, 2, 3, &c.

See also the following reports of cases in which will be found set out clauses relating to the regulation of charities and charitable property which may prove useful to the draftsman in preparing schemes : *Re Prison Charities*, L. R., 16 Eq. 127 (application of property *cypres* in case of lapsed charity) ; *School Board for*

Note (*b*) next page.

I. Statutory Grant of Site for Place of Worship.

and thirty-seventh years of her Majesty Queen Victoria, intituled, "An Act to afford further facilities for the Conveyance of Land for Sites for Places of Religious Worship and for Burial Places" (*c*), do hereby freely and voluntarily, and without any valuable consideration [*or* do, in consideration of the sum £—— to me or the said *grantors* paid], grant [alienate *or* lease] and [as beneficial owner *or* owners] convey to [*A. B.*], ALL [*description of the premises*], and all my [*or* our] right, title, and interest [*or* the right, title and interest of the said *grantors*] to and in the same and every part thereof, TO HOLD unto and to the use of the said [*A. B.*], and his or their heirs [*or* executors and administrators, *or* successors], for the purposes of the said Act, and to be applied as a site for a place of worship, or for a residence for a minister or ministers officiating in ——, or for a burial place, and for no other purposes whatever. [*In case the site be conveyed to trustees, and in cases where the land is purchased, exchanged or demised, usual covenants or obligations for title may be added* (*d*).]

Habendum for purposes of the Act.

IN WITNESS, &c.

London v. *Faulconer*, 8 Ch. D. 571 (application of property to education); *Re Campden Charities*, 18 Ch. D. 310 (appropriation of funds on division of parish); *Hayman* v. *Governors of Rugby School*, L. R., 18 Eq. at p. 29 (dismissal of schoolmaster); *Berkhampstead School Case*, L. R., 1 Eq. 102 (free school); *Att.-Gen.* v. *St. John's Hospital*, L. R., 1 Ch. A. 92 (hospital, leasing powers); *Re Latymer's Charity*, L. R., 7 Eq. 353 (education, competitive examination); *Att.-Gen.* v. *St. John's Hospital*, 2 Ch. D. 554 (restrictions as to religious opinions of trustees).

Charity Commissioners.

As regards schemes for the administration of trusts under the sanction of the Charity Commissioners, it is the practice that schemes for the purpose should be drafted in the office.

(*b*) By the fourth section of the Act (36 & 37 Vict. c. 50), in which the form from which the above precedent is adapted is set out, it is enacted that "one witness to the execution of the document by each party shall be sufficient, and any assurance under this Act shall be and continue valid if otherwise lawful, although the donor or grantor shall die within twelve calendar months from the execution thereof."

Stamp.

(*c*) Stamp, 10*s.*, if without valuable consideration; or otherwise *ad valorem*, as for a conveyance by way of sale, on the amount of the purchase-money.

(*d*) These covenants will not now generally be required to be set out at length, as they may be implied by the grantor being made to convey "as beneficial owner:" see sect. 7 of the Conveyancing and Law of Property Act, 1881.

II. *STATUTORY FORM of* GRANT *of a* SITE *for a* SCHOOL (*e*).

I [*grantor*], of, &c., [*or* WE, *grantor*, of, &c., and *grantor*, of, &c., *or set out the corporate title of a corporation*], under the authority of an Act passed in the fourth and fifth years of the reign of her Majesty Queen Victoria, intituled "An Act for affording further facilities for the Conveyance and Endowment of Sites for Schools," do hereby freely and voluntarily, and without any valuable consideration, [*or* do, in consideration of the sum of £—— to me, or us, or the said —— paid] grant [alienate] and [as beneficial owner *or* owners] convey to [——] all [*description of the premises*] and all my [*or* our] right, title, and interest, [*or* the right, title, and interest of the ——] to and in the same and every part thereof, TO HOLD unto and to the use of the said [*grantee or grantees*] and his [*or* their] heirs, [*or* executors or administrators, *or* successors] for the purposes of the said Act, and to be applied as a site for a school for poor persons of and in the parish of —— and for the residence of the schoolmaster [*or* schoolmistress] of the said school [*or* for other purposes of the said school] and for no other purpose whatever; such school to be under the management and control of [*set forth the manner in which and the persons by whom the school is to be managed, directed, and inspected. In case the school be conveyed to trustees, a clause providing for the renewal of trustees, and in cases where the land is purchased, exchanged, or demised, usual covenants or obligations for title may be added* (*g*)].

Grant.

Habendum for purposes of the Act.

IN WITNESS, &c.

(*e*) This form is taken from sect. 10 of the Schools Sites Act, 1841; only one witness is requisite to the execution by each party.

(*f*) Stamp: see *ante*, p. 68, note (*c*). Stamp.

(*g*) If no clause is added nominating any person or persons to nominate new trustees on the occurrence of vacancies, the power of nomination will rest with the surviving or continuing trustees, under sect. 31 of the Conveyancing Act, 1881, set out, *ante*, Vol. II. p. 6. As to the insertion of express covenants for title, see *ante*, p. 68, note (*d*).

III. *STATUTORY FORM of* CONVEYANCE *of* LAND *for* ADDITION *to existing* CHURCHYARD (*h*).

I [*or* WE, *or the corporate title of a corporation*] under the authority of "The Consecration of Churchyards Act,

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(*h*) The precedent in the text is the statutory form of conveyance given in sect. 5 of the Consecration of Churchyards Act, 1867 (30 & 31 Vict. c. 133), whereby it is enacted that, "any lands or hereditaments adjoining any churchyard or burial place may be conveyed for the purpose of adding thereto" by a deed in the form prescribed with such variations (if any) as the circumstances of the case may require. And every such conveyance shall be valid and effectual in the law to all intents and purposes. By sect. 4 of the same Act, it is enacted that the powers given in the School Sites Acts with regard to conveyances of land "shall be deemed to apply to all persons desirous of granting land for the purpose of such enlargement, in the same way as if the land had been granted as a site for a school; provided nevertheless, that no such grant shall be made other than in fee simple, and may be made in the form hereafter provided; and that every such grant made by any person seised only for life shall be valid without the concurrence therein of the person next entitled in remainder in fee simple or in tail, and such conveyance shall be good and valid without any licence or writ of *ad quod damnum*, the Statutes of Mortmain, or any other statute or law to the contrary notwithstanding." Sect. 8 of the Act saves the provisions of former Acts except as by their act expressly enacted, and accordingly it would seem that the formalities as to execution, attestation and enrolment required by the Mortmain Act (*ante*, p. 4) should be observed. The provisions of the old Acts must still prevail except where this Act applies, *i.e.*, where the land conveyed is for the enlargement of an existing churchyard by the addition of adjoining land: see stats. 39 Geo. 3, c. 134; 3 Geo. 4, c. 72; 5 Geo. 4, c. 103; 1 Will. 4, c. 38; 8 & 9 Vict. c. 70, s. 13.

Stat. 30 & 31 Vict. c. 133.

Sic.

Reservation of right of burial.

By sect. 9 of the Act of 1867 (as amended by the stat. 31 & 32 Vict. c. 47), where the land so conveyed has been given, the giver, whether resident or not in the parish or district, may reserve the exclusive right in perpetuity of burial and of placing monuments and gravestones in a part of the land, not exceeding one-sixth thereof, to be shown and coloured on a plan endorsed on the instrument of consecration; and a memorandum in the form following is to be written on such instrument, and signed by the incumbent and churchwardens of the parish or district:—

Form of memorandum.

WE, A. B. [rector, *or* vicar, *or* incumbent] and C. D., and E. F., churchwardens of ——, declare that the piece of land [*here insert the description and measurement*], and coloured —— on this plan, to be the burial place of G. H., the giver

1867" (*i*), do hereby freely and voluntarily give, grant, and convey [*or, as the case may be,* do hereby in consideration of the sum of £—— to me, *or* us, *or* the —— paid, grant and, as beneficial owner (*or* owners), convey] unto the person or persons, or corporation, sole or aggregate, in whom the churchyard or burial place known as —— of —— is now vested, his or their heirs or successors, ALL [*describe the hereditaments to be conveyed*] and all right, title and interest in the same and every part thereof, TO BE HELD for ever as part of the said churchyard or burial place. III. Statutory Grant of Addition to Churchyard.

IN WITNESS, &c.

IV. *STATUTORY FORM of* GRANT *of* LAND *near a* POPULOUS PLACE *for purposes of regulated* RECREATION, &c. (*k*).

I [*grantor*] of, &c. (*l*), do hereby convey and grant to [*trustee*] of, &c., and [*trustee*] of, &c., as trustees for public Grant.

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of the land added to the churchyard of ——, his heirs and assigns.

(Signed) A. B.,
C. D.,
E. F.,
in the presence of J. K.

Dated this —— day of ——, 18—.

The memorandum so signed after consecration of the land operates as a reservation of an exclusive right in perpetuity. The expenses of repairs and of executing the memorandum are to be borne by the person reserving the right.

The title to the land conveyed is not to be questioned after five years: see sect. 7 of the Act.

(*i*) Stamp, see *ante*, p. 68, note (*c*).

(*k*) This precedent is taken from the form given in sect. 2 of "The Recreation Grounds Act, 1859:" the latter part of the precedent is intended to suggest reservations, &c., which may be made, and the form in which the same may be inserted in a deed of grant under this Act. Grants for purposes of recreation, &c. Stat. 22 Vict. c. 27.

By sect. 1 of this Act, it is enacted that "Any land may be lawfully conveyed to trustees, to be held by them as open public Lands may be conveyed to

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(*l*) Stamp, 10*s*. Stamp.

IV. Statutory Grant of Land for Recreation.

ground for the parish [*or* parishes] of —— in the county of ——, ALL that close or piece of land [*describe the lands conveyed*], TO BE HELD by them in fee simple as public ground for the purposes of "the Recreation Grounds Act, 1859": SUBJECT, nevertheless, to the reservations, restrictions, and conditions following, that is to say:—

Reservations, &c.

Reservation of mines and minerals.

1. All mines and minerals in and under the said lands are excepted and reserved out of this present grant, together with full power for me, the said [*grantor*], my heirs and assigns, to work and get the said mines and minerals, but only by underground workings, and without entering upon the said lands, or any part thereof.

Restriction as to building.

2. No building of any kind shall be erected on the said

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trustees to be held by them as public recreation grounds.

grounds for the resort and recreation of adults, and as playgrounds for children and youths, or either of such purposes and for any estate, and subject to any reservations, restrictions and conditions which the donor or grantor may think fit. But this enactment *shall not extend to authorise any land to be so conveyed for any greater estate than the donor or grantor would, independently of this Act, have power to dispose of.*

Form of conveyance.

By sect. 2, "Any such conveyance may be in the [*form above given*] subject to any modification thereof which the case may require:" and "the grant or conveyance of such lands shall not require enrolment, nor to be by indenture, and shall be valid, although the donor or grantor shall die within twelve calendar months after the making of such grant any of the provisions of the Act passed in the 9th year of the reign of King George the 2nd, chapter 36, notwithstanding."

Execution and attestation.

Nothing is here said as to execution or attestation of the grant, and it would seem that the formalities in these respects imposed by the Mortmain Act (see *ante*, p.) must be complied with to ensure the validity of the grant.

Other provisions of the Act.

Lands of municipal corporations may be granted with the consent of the Treasury: see sect. 3 of the Act. Parish lands may be granted by the trustees or feoffees (if any), or otherwise by the churchwardens and overseers pursuant to a resolution of the vestry, and with the approbation of the Local Government Board: sect. 4. The lord of the manor, or the churchwardens and overseers of the parish, or the persons to whom the lands are conveyed, are to be a body corporate for holding the lands, &c.; but the management and direction is to remain in the persons named in the conveyance: and if no such persons are named on a failure of such persons, the Charity Commissioners may settle a scheme for the appointment of managers and directors: sect. 5. The managers and directors may make and enforce bye-laws and regulations subject to the approval of the Charity Commissioners: sect. 6. Any personal property to the amount of 1,000*l.* may be bequeathed for the purposes of the grounds.

IV. Statutory Grant of Land for Recreation.

lands without the consent in writing of me, the said [*grantor*], my heirs or assigns, other than and except a cricket pavilion of an ornamental character and in accordance with a plan and drawings to be approved by me, my heirs or assigns.

Restriction as to sale of liquors.

3. No malt or spirituous liquors, nor any form of refreshment for the sale of which an excise or other licence is required, shall be kept or offered for sale in or upon the said lands.

Condition as to fencing off lands.

4. The said [*trustees*], or other the trustees for the time being, of the said lands shall within —— months from this date make, and from time to time maintain in proper repair and condition, a good and sufficient fence on the said lands between the same and my adjoining lands on the —— side thereof.

Management of lands.

5. The said [*trustees*], and other the trustees for the time being of the said lands, shall be the managers and directors of the said lands within the meaning and for the purposes of the said Act.

Appointment of trustees.

6. If the said [*trustees*] or either of them, or any other trustee or trustees to be appointed as is hereinafter mentioned, shall die, or remain out of the United Kingdom for more than twelve months, or desire to be discharged from the trusts or powers reposed in or conferred on him or them, or become unfit to act therein, or incapable of acting therein, then the vestry of the said parish shall within —— calendar months after such vacancy or vacancies shall occur, by a vote to be taken in the usual manner at a meeting duly assembled for the purpose, appoint other persons or another person to fill all or any vacancies or vacancy so occurring as aforesaid.

7. On violation or breach of any of the reservations, restrictions, or conditions herein contained, the grant hereby made shall determine and be absolutely void.

In witness, &c.

V. *CONVEYANCE in* MORTMAIN *of a* BUILDING *and* LAND *to* TRUSTEES *to be used as a* COTTAGE HOSPITAL.

Parties.

THIS INDENTURE (*m*), made the —— day of ——, 18—, BETWEEN [*grantor*] of, &c., of the one part and [*trustee*] of, &c., and [*trustee*] of, &c., of the other part;

Recital of desire to convey upon charitable trusts.

WHEREAS the said [*grantor*] being seised of the hereditaments hereinafter described for an estate of inheritance in fee simple in possession, is desirous of settling and assuring the same upon the charitable trusts and in the manner hereinafter appearing:

Testatum.

NOW THIS INDENTURE WITNESSETH, that in order to effectuate his said desire the said [*grantor*]

Conveyance.

hereby grants and conveys unto the said [*trustees*] and their heirs all that [*parcels*], TO HAVE AND TO HOLD the said messuage or building lands and premises unto the said [*trustees*] and their heirs, TO THE USE OF the said [*trustees*]

Trusts and powers.

their heirs and assigns, UPON the trusts and to and for the intents and purposes and with and subject to the powers and directions hereinafter declared of and concerning the same (that is to say):—

As to use of premises as a cottage hospital.

1. The trustees of these presents for the time being (hereinafter called the trustees) shall hold the premises upon trust to permit the same to be used as a hospital, infirmary, or dispensary, or for some similar purpose, for the benefit of such poor and sick persons as the trustees, or any such committee or persons acting by delegation under the trustees as hereinafter mentioned, shall think fit.

As to making rules and regulations.

2. The trustees shall at all times have power to make rules and regulations for the control, management and use of the said hospital, infirmary, or dispensary, and from time to time to revoke, amend, or alter the said rules and regulations, as they shall in their own discretion think fit.

As to delegating management of hospital to committee.

3. The trustees may from time to time delegate during such time or times as they shall think fit, the control, management and use of the premises to any committee or persons to be appointed for that purpose, in such manner as the trustees shall approve, but so as that every such

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Stamp.

(*m*) Stamp, 10*s*.

delegation as aforesaid shall, at all times after it shall have been made, be revocable by the trustees.

As to admitting persons to benefit of hospital with or without payment.

4. The trustees may charge such (if any) sum or sums of money as they shall think fit for participation in the benefit of the trusts hereby created, or may admit any person or persons thereto without any payment whatsoever by them.

As to eligibility of candidates for admission.

5. No person shall be ineligible or considered as a less deserving object of the charity created by these presents or to be created under any power herein contained by reason or on account of his or her religious opinions.

As to sale and exchange of lands conveyed.

6. It shall be lawful for the trustees at any time or times hereafter to sell or exchange for other hereditaments in England all or any of the said lands; and upon any such exchange to give or receive any money for equality of exchange; and to convey the hereditaments so sold or parted with in exchange as aforesaid to any person or persons to and for his and their own use and benefit freed from all trusts whatsoever.

As to investment of proceeds of sale.

7. All (if any) money which shall be received by the trustees on any such sale or sales, exchange or exchanges, as aforesaid, may be invested either in the purchase of other lands, tenements, or hereditaments in England or in or upon any stocks, funds, or securities, in or upon which trustees may at the time of such investment be entitled to invest trust money.

As to varying investments and purchase of other lands.

8. At all times it shall be lawful for the trustees to vary the investment of all or any of the property for the time being subject to the trusts hereby declared, or to the trusts to be declared pursuant to the direction and under the power in that behalf hereinafter contained, so that every investment be made in the purchase of freehold hereditaments in England or in or upon some such stocks, funds, and securities as aforesaid.

Purchased lands to be subject to trust.

9. All hereditaments which shall be so acquired by exchange or purchase as aforesaid shall, until the trust first hereinbefore declared shall be revoked or altered in exercise of the power in that behalf hereinafter contained, be held upon the trust first hereinbefore declared of the premises.

Power for trustees to revoke or alter trusts.

10. It shall at all times hereafter be lawful for the trustees by any deed or deeds to revoke or alter all or any of the trusts, powers, and directions, including those

V. Grant of Land for Cottage Hospital.

as to meetings and the proceedings thereat, which by virtue of these presents or by virtue of these presents and of the exercise of any power herein contained shall for the time being be applicable to all or any of any other hereditaments, money, stocks, funds, or securities which may have been acquired under any of the powers herein contained or to the affairs of the charity, save and except that this clause shall not, nor shall anything in these presents contained, authorise the revocation of the declaration hereinbefore contained that no person shall be ineligible or considered as a less deserving object of this charity created by these presents, or to be created under any power herein contained, by reason or on account of his or her religious opinions.

Power to declare new charitable trusts.

11. In the event of the sale of the premises or any part thereof, or of any other hereditaments which may be so acquired by exchange or purchase as aforesaid, and of the investment of the money produced by the said sale not in the purchase of land, but in or upon any such stocks, funds, or securities as aforesaid, and also in the event of any and every exercise of the power of revocation and alteration hereinbefore contained, the trustees shall by deed declare that they will, and they shall thenceforth stand possessed of and interested in the hereditaments, money, stocks, funds and securities, or any of them, the then previous trusts whereof shall have been so revoked, or altered, or of the stocks, funds, and securities in or upon which any money produced by sale of hereditaments shall have been invested upon such trusts for some charitable, benevolent, or public object or purpose as the said trustees for the time being shall in their discretion think fit.

Annual general meeting of trustees.

12. One ordinary meeting of the trustees shall be held in every year for transacting the general business of the charity, and such ordinary meeting shall be held on some convenient day to be appointed by the trustees themselves.

Special general meetings.

13. Any two of the trustees may call a special meeting by delivering at the several dwelling-houses of the other trustees or sending to them respectively through the post twenty-one days previous notice of such meeting stating the time and place of holding the same, and the object or purposes for which it is to be held. A notice sent through the post and addressed to a trustee at his dwelling-house shall be effective,

although such trustee may at the time be absent from home and may never actually receive such notice.

14. All meetings of the trustees shall be held either in the building so erected on the premises as aforesaid or at such other convenient place within the —— parish as shall have been agreed on by the trustees, as a place at which the meetings may be convened. Place of meeting.

15. Three trustees at a meeting shall form a quorum. Quorum.

16. Every decision of the trustees as to the exercise of any power hereby given to them shall be made by a resolution at an ordinary meeting or special meeting, carried either unanimously or by a majority of the votes of the trustees present at that meeting, and in case of an equality of votes the chairman of the meeting shall have a casting vote. Voting at meetings.

17. Trustees dissenting from any lawful decision of the trustees, which shall have been so made as aforesaid, shall nevertheless concur in all such deeds and other acts as shall be requisite in order to give effect to such decision as last aforesaid. Decision to bind dissenting trustees.

18. Minutes of the proceedings of every meeting of the trustees shall be entered in a book to be kept for that purpose and signed by the chairman of such meeting or of the following meeting when they are read over, and shall, when so entered and signed, be conclusive evidence of the business and other matters transacted at such meeting. Minutes of proceedings.

19. The trustees may from time to time make such rules and bye-laws for and in relation to the conduct of the business of the charity as they may think fit. Rules and bye-laws.

20. The power of appointing a new trustee or new trustees of these presents, which was created by the Conveyancing and Law of Property Act, 1881, or shall be created by any future law, shall be exerciseable by the continuing trustees or trustee for the time being, and if there shall not be any continuing trustee, then by the refusing or retiring trustees or trustee, if any, and if able and willing to exercise this power, or otherwise by the acting executors or executor, administrators or administrator, of the trustee who, alone continuing to be such until his death, shall have then last previously died. Appointment of new trustees.

21. So often as any trustee of these presents shall die or remain out of the United Kingdom for more than twelve Vacancies to be filled up within *six* months.

V. Grant of Land for Cottage Hospital.

calendar months, or be discharged from the trust of these presents, or become unfit to act, or incapable of acting in the said trusts, then, and in every such case, and within *six* calendar months thereafter, the power of appointing a new trustee shall be exercised and the trust filled up.

In witness, &c.

VI. *CONVEYANCE in* Mortmain *of* Almshouses *and* Land *for* Charitable Purposes, *and* Declaration *of* Trust *of* Stock *for keeping the* Almshouses *in* Repair, &c.

Parties.

THIS INDENTURE (*n*), made the —— day of ——, 18—, between [*grantor*], of, &c., of the first part [*wife*], the wife of the said [*grantor*], of the second part, and [*trustee*], of, &c. [*trustee*], of, &c., and [*trustee*], of, &c., of the third part:

Recitals: of seisin; of grantor;

Whereas the said [*grantor*] is seised of or entitled to the messuages or cottages and other hereditaments hereinafter described and intended to be hereby granted for an estate of inheritance in fee simple in possession, free from incumbrances:

of erection of almshouses;

And whereas the said messuages or cottages have been lately erected by the said [*wife*], and are intended by her to be used and occupied as almshouses for poor widows and spinsters, inhabitants of the borough or parish of —— aforesaid, which said messuages or cottages are now in the several occupations of [*present occupiers*], who have been placed therein by the said [*wife*] as the occupants thereof during their respective lifetimes, subject to removal for misconduct only, and he the said [*grantor*] is desirous of conveying the same hereditaments and premises to the uses, upon the trusts, and in manner hereinafter declared and contained concerning the same:

of desire to convey;

of endowment.

And whereas, for the purpose of forming a fund for the payment of the poor-rates and other rates and taxes chargeable upon the said hereditaments and premises, and of the premiums on insurance against fire, and for keeping the said messuages and cottages in tenantable

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Stamp.

(*n*) Stamp, 10*s*.

VI. Conveyance in Mortmain of Almshouses, &c.

repair and condition, the said [*wife*] has invested the sum of £—— in the purchase, in the names of the said [*trustees*], of the sum of £—— 3*l.* per cent. Consolidated Bank Annuities, to be held by them upon the trusts hereinafter declared concerning the same. NOW THIS INDENTURE WITNESSETH, that for effectuating the desire of the said [*wife*], and in consideration of the premises, the said [*grantor*] hereby grants and conveys unto the said [*trustees*] and their heirs, ALL THAT piece or parcel of land situate, &c. [*describe parcels*], and those —— messuages or cottages (hereinafter called the almshouses), erected as aforesaid, and now being on the same piece or parcel of land, with the outbuildings thereto belonging: TO HOLD the piece or parcel of land, almshouses, and premises, with their appurtenances, UNTO AND TO THE USE of the said [*trustees*], their heirs and assigns for ever, SUBJECT nevertheless to the proviso hereinafter contained, and upon the trusts following, that is to say: UPON TRUST that they the said [*trustees*] and the survivors of them, do and shall permit the said [*present occupiers*] to occupy the said almshouses now occupied by them respectively during their respective lifetimes, free from any rent or render in respect of such almshouses; And when they or any of them, or any future occupant (if any) of the said almshouses, shall die or cease to occupy the said almshouses, or any of them do and shall from time to time permit the almshouses so becoming vacant to be occupied free from rent or render as aforesaid, by such poor widow or spinster [who shall have been for not less than —— years previously (*o*)], an inhabitant of the parish of —— aforesaid for her lifetime, as the said [*trustee*] or the survivors of them, but during the lives of the said [*grantor*] and [*wife*], and the life of the survivor, with their or his or her concurrence, shall nominate: PROVIDED ALWAYS that the present or succeeding occupants

Testatum.

Grant of almshouses to trustees.

Upon trust to permit present occupants to occupy almshouses;

to fill up vacancies;

to remove occupants for misconduct.

(*o*) Where under a scheme it was provided that no candidate for election to a charity school should be eligible unless born in the parish, or unless his parents should be or shall have been parishioners of a certain parish, it was held by the Court of Appeal that where a person took a house temporarily, for which he paid rates and taxes, before the election, merely in order to acquire the qualification, and his son was elected, the election was valid: *Etherington* v. *Wilson*, 1 Ch. D. 160, overruling the decision of *Malins*, V.-C., reported L. R., 20 Eq. 606.

Meaning of term "parishioner."

VI. Conveyance in Mortmain of Almshouses, &c.

of the said almshouses shall be removeable by or at the instance of the parties or party in whom the right of nomination thereto is hereby vested, for disgraceful or disorderly conduct: AND IT IS HEREBY AGREED AND DECLARED that the trustees shall stand possessed of and interested in the said sum of £—— 3*l.* per cent. Consolidated Annuities, upon trust that they the said [*trustees*], and the survivors of them shall, by and out of the dividends and annual proceeds of such sum of stock, pay and discharge all taxes, rates, assessments, and outgoings whatsoever (including the premiums or any policy of insurance against loss or damage by fire), which now are, or at any time hereafter shall be taxed, rated, charged, or assessed, or be payable upon or in respect of the said hereditaments and premises or any part thereof: And also all sums or outlay which may be required for keeping the said almshouses and premises in tenantable repair and condition: AND SHALL from time to time retain the surplus of such dividends and annual proceeds, and accumulate the same by investment when at any time amounting to £——, so as to form a reserve fund to meet any extraordinary outlay in the way of repairs or otherwise, which may hereafter be required in respect of the said almshouses and premises: PROVIDED ALWAYS, and it is hereby expressly agreed and declared, that upon the death of any one of them the said [*trustees*], it shall be lawful for the survivors of them, and upon the death of any two of them, it shall be obligatory upon the survivors of them, and they are hereby empowered, to apply to the High Court of Justice, Chancery Division, and the Board of Charitable Commissioners for England and Wales, or to either of them, for an order that the hereditaments and premises intended to be hereby granted may be vested in the Official Trustee of Charity Lands and his successors, and that the trust funds of these presents may be vested in the Official Trustees of Charitable Funds under or by virtue of the provisions of the Charitable Trusts Act, 1853, and the Charitable Trusts Amendment Act, 1855, or either of such Acts, and immediately upon such vesting order being made, the hereditaments and premises hereby granted

Declaration of trusts of stock.

Proviso that on deaths of trustees, land and stock shall be vested in official trustees (*p*).

(*p*) As to the powers and duties of Official Trustees of Charity Lands and Charitable Funds, and vesting orders, see stats. 16 & 17 Vict. c. 137, ss. 47—52; 18 & 19 Vict. c. 124, ss. 15—28.

shall be held by the Official Trustee of Charity Lands and his successors, and the trust funds hereby provided and appropriated shall be held by the Official Trustees of Charitable Funds upon the trusts hereinbefore declared, of and concerning such hereditaments and premises respectively.

VI. Conveyance in Mortmain of Almshouses, &c.

IN WITNESS, &c.

VII. *DEED of* DECLARATION *of* TRUST *of a* MISSION-HOUSE.

THIS INDENTURE (*q*), made the —— day of ——, 18—, BETWEEN the reverend [*vicar*], vicar of the ecclesiastical district of St. Anne in ——, in the county of ——, of the one part, and [*trustee*], of, &c., and [*trustee*], of, &c., of the other part: WHEREAS, by an indenture dated the —— day of ——, 18—, and made between the said [*vicar*], of the first part, the Ecclesiastical Commissioners for England, of the second part, the right reverend the Lord Bishop of ——, of the third part, and the said [*trustees*], of the fourth part, in consideration of the sum of £—— paid by the said [*trustees*] into the Bank of England to the account of the said Ecclesiastical Commissioners, All that piece or parcel of land situate in the High Street of —— aforesaid, containing by admeasurement —— superficial feet or thereabouts, and which with the dimensions and abuttals is particularly described and delineated in the plan drawn in the margin thereof, and therein coloured pink, with the appurtenances, subject to the tithe commutation rent-charge, and all other duties and payments ecclesiastical or civil, charged upon or payable out of the same, and to all rights of way and easements affecting the same, were conveyed unto and to the use of the said [*trustees*], their heirs and assigns for ever: AND WHEREAS the said sum of £—— so paid by the said [*trustees*], as the consideration money for the said hereditaments and premises comprised in and granted by the said recited indenture as aforesaid, was in fact so paid by them out of monies in their names arising from voluntary contributions, and applicable for the purposes

Parties.

Recitals: of conveyance of land for mission-house;

that consideration paid for land was raised by subscriptions.

(*q*) Stamp, 10*s*.

Stamp.

VII. Endowment of Mission-House.

Testatum.

Declaration of trust.

hereinafter mentioned, and it has accordingly been agreed that such a declaration of trust as is hereinafter contained shall be made and executed: NOW THIS INDENTURE WITNESSETH, that it is hereby agreed and declared, that the said [*trustees*], their heirs and assigns, shall henceforth stand and be seised and possessed of the said hereditaments and premises comprised in and expressed to be granted by the said recited indenture, and any erections or buildings for the time being thereon, and the rents and profits thereof (if any), upon the trusts and with and subject to the powers hereinafter declared and contained concerning the same, that is to say, UPON TRUST for the general purposes of a mission-house, with the object of promoting religion according to the doctrines of the Church of England as by law established, within the ecclesiastical district of —— aforesaid, and of benefiting the poor parishioners of the same district: AND IT IS HEREBY AGREED AND DECLARED, that the said mission-house and premises shall be under the superintendence, authority, and control of the vicar of the ecclesiastical district of —— aforesaid for the time being: And that the trustees or trustee for the time being of these presents shall at all times permit the said mission-house and premises to be occupied by such person or persons, and to be used in such manner for the general purposes aforesaid, as such vicar shall from time to time think fit and determine: And shall at all times permit the said vicar for the time being by himself or his agent to have the custody and possession of the keys of the said mission-house and premises, and shall from time to time do all other things which may be necessary or proper for establishing and maintaining the superintendence, authority, and control of the vicar of the said ecclesiastical district of —— aforesaid for the time being over the said mission-house and premises: PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the trustees or trustee for the time being of these presents, with the consent of the vicar of the said ecclesiastical district of —— aforesaid for the time being, from time to time to build upon, let, mortgage, sell, pull down, rebuild and alter, or otherwise deal with the said hereditaments and premises comprised in and expressed to be granted by the said recited indenture, and any erections or buildings for the time being thereon, in such manner in all respects as they or he the said trustees or

Mission-house to be under control of vicar.

Power for trustees to sell, mortgage, lease, &c., the premises.

VII. Endowment of Mission-House.

trustee shall think fit: But so nevertheless that no sale, mortgage, or other disposition of the said hereditaments and premises, or any part thereof (other than a lease from year to year, or for a term not exceeding two years in possession), shall be made or granted without the consent in writing of the Lord Bishop of —— for the time being: PROVIDED ALWAYS, and it is hereby agreed and declared, that no mortgagee or purchaser from, or other person claiming for any valuable consideration under the said trustees or trustee in respect of the said hereditaments and premises, shall be bound to see or inquire as to the expediency or propriety of the mortgage, sale, or other disposition of the said hereditaments and premises, and notwithstanding any impropriety or irregularity whatsoever in any such mortgage, sale, or other disposition, the same, if made or granted with such consents as aforesaid, shall, so far as regards the safety and protection of the mortgagee, purchaser, or other person claiming for value as aforesaid under the same, be deemed to be within the scope of the present trust and power, and shall be valid and effectual accordingly: AND it is hereby agreed and declared, that the trustees or trustee for the time being of these presents [shall receive all monies which shall arise from any sale, mortgage, or other disposition of the said hereditaments and premises, or any part thereof, and their or his receipt shall be an effectual discharge for the same monies, and they or he] shall apply and deal with the same monies for the general purposes of the mission-house aforesaid, with the consent of the vicar of the ecclesiastical district of —— aforesaid for the time being, in such manner as they or he the said trustees or trustee shall think fit: PROVIDED ALWAYS, that it shall be lawful for the said trustees or trustee for the time being, at any time or from time to time, with the consent of the Lord Bishop of —— for the time being, and of the vicar of the ecclesiastical district of —— aforesaid for the time being, to apply and deal with the same last-mentioned monies or any part thereof, or any funds representing the same respectively, for such other public charitable purposes for the benefit of the said district of —— aforesaid, and the inhabitants thereof, or some part thereof respectively,

Protection of purchasers, &c.

Receipt clause and as to application of monies received (*r*).

Power to apply monies to other charitable purposes.

(*r*) The words in brackets may be omitted, if desired; see sect. 36 of the Conveyancing and Law of Property Act, 1881.

VII. Endowment of Mission-House.

and in such manner as the said trustees or trustee for the time being shall think fit and determine, and with power if they or he shall think fit, with the like consent, to settle and approve of any scheme or schemes for such last-mentioned application, and for that purpose to vary the trusts and powers of these presents as they or he shall think fit and determine: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said trustees hereby constituted, or either of them, or any trustee or trustees appointed as hereinafter provided, or to be appointed by any other competent authority, shall die or be abroad or desire to be discharged, or refuse or become incapable to act, then and in every such case it shall be lawful for the vicar of the ecclesiastical district of —— aforesaid for the time being to appoint a new trustee or new trustees in the place of the trustee or trustees so dying or being abroad, or desiring to be discharged, or refusing or becoming incapable to act as aforesaid, and upon every or any such appointment, the number of trustees may be augmented or reduced to a number not less than ——; And upon every such appointment all the trust property shall, if and so far as the nature of the property and other circumstances may require or admit, be transferred so that the same may be vested in the trustees for the time being of these presents: And every trustee so appointed as aforesaid may, as well before as after the said trust premises shall have been so vested as aforesaid, act or assist in the execution of the discretionary and other trusts and powers of these presents, as fully and effectually to all intents and purposes as if he had been hereby constituted a trustee.

Power to appoint new trustees.

IN WITNESS, &c.

VIII. *CONVEYANCE in* MORTMAIN (*in confirmation of a void devise*) *to the* WARDEN *and* FELLOWS *of a* COLLEGE *in the University of Oxford, for the purposes of a* SCHOOL *and* HOUSES *for* POOR WIDOWS; *and* DECLARATION *of* TRUST *of* STOCK *transferred to provide stipend for teacher, maintenance of widows, repair of tomb, &c.* (*r*).

THIS INDENTURE (*s*), made the —— day of ——, 18—, BETWEEN [*grantor*], of, &c., of the one part and the Warden and Fellows of —— College, in the University of Oxford, of the other part; WHEREAS [*testator*], of, &c., deceased, the late husband of the said [*grantor*], by his will, dated the ——, after giving to his wife, the said [*grantor*], a house and hereditaments in ——, therein mentioned, outbuildings, yards, gardens, and appurtenances thereto belonging, gave and devised to his said wife all other his freehold messuages or tenements, lands, grounds, hereditaments and premises in the —— parish aforesaid, unto his said wife, her heirs and assigns, for ever; and he declared it to be his will and desire that his executrix should invest in the public funds a sufficient sum of money to raise £—— per annum as a salary or stipend for a proper person or persons to instruct poor children of the —— parish aforesaid, to read and write, and to teach them, &c. [*set out verbatim from the will the directions of the testator with respect to the subjects and mode of instruction*]: And he declared it to be his further will and desire that his said wife should invest in the public funds such further sums as she should deem sufficient for the maintenance of —— poor widows of the —— parish aforesaid who should be upwards of —— years of age, and he directed that each of the said widows should have a house to reside in as soon as houses could be provided by his executrix, which he thereby declared were to be provided and paid for out of the residue of his property, and after various other dispositions and directions he gave, devised, and bequeathed all the residue of his real and personal estate to his

Parties.

Recitals:

of will devising freeholds;

of desire of testator that grantor should invest in funds money sufficient to raise certain sum as stipend for schoolmaster;

and further sums for maintenance of widows;

that each widow should have a house to reside in.

Devise of residence to grantor and warden and fellows.

(*r*) As to conveyances in confirmation of void devises, see *ante*, p. 27 *et seq.* And as to how far a trust for maintenance of a tomb is a valid charitable purpose, see *ante*, p. 49.

(*s*) Stamp, 10*s*.

Stamp.

VIII. Conveyance in Mortmain of Land for School, &c.

said wife and the reverend [A. B.] (therein described as rector of the —— parish aforesaid), their heirs, executors, administrators and assigns upon trust to sell and dispose of, collect and get in the same and the money arising therefrom to apply and dispose of in manner following, that is to say, the sum of £—— in the purchase of stock in the £3 per cent. Consolidated Bank Annuities (part thereof to be applied in manner therein specified), and the residue thereof to remain and be to the use of —— (as wife should appoint), and in default of such gift, ——, limitation, or appointment, in trust, and to and for the use and benefit of the Warden and Fellows of —— College aforesaid, and their successors (subject nevertheless to a direction therein contained), and the said testator appointed his wife sole executrix of his said will: And whereas the said testator duly made and executed a codicil dated the —— day of ——, 18—, to his said will, and thereby gave and bequeathed the sum of £—— as therein mentioned, but in all other respects he confirmed his said will: And whereas the said [*testator*] died on the —— day of ——, 18—, without having revoked or altered his said will or codicil except so far as the said will was altered by the said codicil, and the said will and codicil were duly proved in the Principal Registry of the Probate Division of the High Court of Justice on the —— day of ——, 18—, by the said [*grantor*]: And whereas it appeared upon the decease of the said [*testator*] that there was not any school-house in the parish of —— aforesaid convenient for the instruction of the poor children of the said parish, and it also appeared that the direction contained in the said will for providing houses for —— poor widows was void at law: And whereas the said [*grantor*] being desirous of effecting the object of the said [*testator*] in regard to his said intended provisions for the benefit of such children, and widows as aforesaid, and being also desirous of adding to and increasing the said intended buildings, has erected on the said piece or parcel of ground hereinafter described (being part of the said hereditaments in the parish of —— aforesaid devised by the said will) the school-houses and cottages hereinafter mentioned, and has also transferred into the names of the said Warden and Fellows of —— College aforesaid (who had consented to act as trustees thereof), the sum of £—— 3*l.* per Cent. Consolidated Annuities; And whereas the said school-house

On trust to collect, &c., to uses as wife should appoint;

in default thereof for benefit of warden and fellows.

Codicil bequeathing certain sums;

death of testator;

probate of will;

that upon death of grantor there was no school-house, and that directions of will were void;

that grantor has erected school-house and cottages, and transferred stock into name of warden and fellows;

that school-house has

VIII. Conveyance in Mortmain of Land for School, &c.

has since its erection been, and is still, used as a school, or place of instruction for the poor children of the said parish of ——, and the said cottages have since their erection been used, and are still used, as houses or residences for —— poor widows of the same parish, and the dividends of the said sum of £—— 3*l.* per Cent. Consolidated Annuities have since the said transfer of the same sum, been duly applied for effecting the objects for which the same were intended: AND WHEREAS the said [*grantor*] being desirous of still further adding to, or increasing, the said intended provision of the said [*testator*], and also of making some provision for the benefit of the poor of the said parish of ——, and for cleaning and repairing the tomb of the said [*testator*], in the church of —— aforesaid has transferred into the names of the said Warden and Fellows of —— College aforesaid (who have consented to act as trustees thereof) the sum of £—— like Annuities as a fund for effecting such last mentioned objects: AND WHEREAS the said [*grantor*] is desirous of conveying unto the said Warden and Fellows of —— College aforesaid (who have consented to act as trustees thereof), and to their successors for ever, the said piece or parcel of ground hereinafter described, and the said school-houses and cottages with their appurtenances upon the trusts hereinafter declared of the same, and is also desirous of declaring the trusts of the said several sums of £—— and £—— respectively. NOW THIS INDENTURE WITNESSETH that in consideration of the premises the said [*grantor*] hereby grants and conveys unto the said Warden and Fellows of —— College aforesaid, and their successors, ALL that piece or parcel of land situate in the parish of —— aforesaid, and containing by admeasurement, &c. (all which said premises are delineated with the abuttals and described in the plan drawn in the margin of these presents, TO HOLD the premises UNTO AND TO THE USE of the said Warden and Fellows of —— College aforesaid, and their successors for ever, upon the trusts hereinafter declared of the same: UPON TRUST that they, the said Warden and Fellows, and their successors do and shall at all times hereinafter permit and suffer the said school-houses, with the outbuildings and appurtenances thereto belonging, to be used as a school-house for instructing poor children of the said parish of —— to read and write, and for teaching, &c.; And also a house or residence for the person or persons who shall from

been used as such, and cottages used as residence for widows, and stock applied for purposes intended;

that grantor being desirous of further carrying out testator's intention of making provision for repairing his tomb had transferred further sum of stock;

that grantor is desirous of conveying to warden and scholars land school-house, &c., and declaring trusts of stock.

Testatum.

Grant.

Habendum, to use of warden and fellows upon trusts;

to permit school-house to be used as such for instructing poor children, and residence of master;

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time to time be appointed, in the manner directed by the said will, to instruct and to teach such poor children as aforesaid; And do and shall at all times hereafter permit and suffer that part of the said piece or parcel containing —— square yards, and delineated on the said plan, and therein coloured blue, to be used as a garden by such person or persons as last aforesaid; And also do and shall at all times hereafter permit and suffer the said —— cottages, with the outbuildings and appurtenances thereto belonging, to be used as houses or residences for the —— poor widows of the said parish of ——, who shall from time to time be nominated or appointed in the manner directed by the said will; And do and shall at all times hereafter permit and suffer that part or piece of the said parcel of ground containing, &c., and delineated on the said plan, and therein coloured pink, which lies in front of the said cottages, to be used as gardens by the said —— poor persons in such proportions and in such manner as the said Warden and Fellows, and their successors, shall from time to time direct; And do and shall at all times hereafter permit and suffer that part of the said piece or parcel of ground containing, &c., and delineated on the said plan, and therein coloured brown, to be used as a road to the said school-house, cottages, and gardens, and also to permit the same to be used by the said —— for any purpose of utility or convenience: AND THIS INDENTURE ALSO WITNESSETH that in consideration of the premises, it is hereby agreed and declared that the said [*grantor*] in exercise of the powers reserved to her by the said will, and of every other person or authority in anywise enabling her in that behalf hereby appoints that the said Warden and Fellows, and their successors, shall stand and be possessed of, and interested in the said several sums of £—— and £——, 3*l.* per Cent. Consolidated Annuities respectively so transferred as aforesaid, and the dividends and annual produce upon the trusts hereinafter declared of the same respectively (that is to say), As to the sum of £—— part of the said sum of £——, Upon trust that the same may be a perpetual trust fund for raising the sum of £—— (being double the amount specified in the said will), as a salary or stipend for the person or persons who shall from time to time be appointed in the manner directed by the said will to instruct and teach such poor children as aforesaid, and supplying such person or persons in addition to the said

land to be used as garden;

cottages to be used as houses for widows;

land to be used as gardens for widows;

part of ground to be used as road.

Second *testatum*.

Grantor appoints that warden, &c., shall stand possessed of stock transferred.

Trust to raise annual sum of £—— as stipend for master;

VIII. Conveyance in Mortmain of Land for School, &c.

salary or stipend with medical assistance and fuel; And also for providing books for the education of the poor children, and a bible and prayer-book for each of them if deserving, at the time of leaving the said school, and also for repairing and improving the said school-house, and the outbuildings and appurtenances thereto belonging, and insuring the same against damage by fire; And as to the sum of £—— (the residue of the said sum of £——), Upon trust that the same may be a perpetual trust fund for supporting and maintaining the —— poor widows who shall, for the time being, be residing in the said —— cottages, and for providing them with medical assistance and fuel; And also for the repairing and improving the said cottages, and outbuildings and appurtenances thereto belonging, and insuring the same against damage by fire; And as to the said sum of £—— upon trust that the same may be a perpetual trust fund for raising the sum of £—— to be paid from time to time to the rector for the time being of ——, and to be applied by him in providing such poor persons of the parish of —— aforesaid as he, the said rector, shall think most necessitous and deserving with fuel and other necessaries and comforts; And also for repairing and keeping in good order and condition the said tomb of the said [*testator*] in the church of —— aforesaid and the iron rails round the same (so far as the same may lawfully be so expended, but not further or otherwise), and subject thereto for aiding and assisting the performance and execution of the several trusts and purposes hereinbefore declared of and concerning the said sum of £——: Provided always and it is hereby agreed and declared and the said [*grantor*] hereby further directs and appoints that out of the annual amount which under the trust hereinbefore declared shall from time to time be applicable for the benefit of the —— poor persons which shall for the time being be residing in the said —— cottages, the following sums shall, as far as circumstances will permit, be payable to each of the said —— persons at the times hereinafter mentioned (that is to say) the sum of £—— the first Monday of every month, the sum of £—— on the last Monday of the month of August to be laid out in the purchase of fuel for the then ensuing winter, the further sum of £—— on the first Monday after the —— day of ——, to be laid out in the purchase of soap and candles, and the further sum of £——

and to supply medical assistance and fuel, and to provide books, &c., for children;

and to repair and insure school premises.

Trust for maintenance of widows;

for repairing and insuring cottages.

Trust to raise sum to be paid to rector to be applied for providing fuel, &c.;

and for repairing tomb of testator;

and subject thereto for aiding the trusts of £——.

Proviso as to manner of paying maintenance money of widows.

VIII. Conveyance in Mortmain of Land for School, &c.

on the first Monday in the month of November, to be laid out in the purchase of wearing apparel or bedding: PROVIDED ALSO, and it is hereby further agreed and declared and the said [*grantor*] hereby further directs and appoints that if [A. B.], spinster (a servant of the said [*grantor*]), shall not be appointed to reside in one of the said cottages by the said [*grantor*] during her life then and in such case, and unless the said [*grantor*] shall have directed the contrary by her will, or by some codicil thereto, the said [A. B.] (if then either a single woman or a widow) shall be appointed to reside in one of the said —— cottages upon the first vacancy which shall occur in the said cottages after the decease of the said [*grantor*]: PROVIDED ALSO and it is hereby agreed and declared, and the said [*grantor*] hereby further directs and appoints that it shall be lawful for the said [*grantor*] during her life, and after her decease, for the rector of —— aforesaid, to visit the said school-house and cottages and direct and superintend the affairs and concerns thereof, and the mode of teaching and instruction to be used in the said school, and also from time to time to make any rules or regulations to be observed by the persons or person who shall be appointed to teach and instruct such poor children as aforesaid, and by the —— poor persons who shall be appointed to reside in the said —— cottages respectively, and to enforce the observance of such rules and regulations respectively; And upon breach or non-observance of any of the said rules and regulations by any such person or persons as aforesaid or upon any other act of misconduct or misbehaviour or in the case of any such teacher or instructor as aforesaid upon any sufficient evidence of his or their unfitness for that office, to annul the appointment of such person or persons, and to remove him, her, or them from the said premises, and deprive him, her, or them, of all benefits or advantages under these presents or the will of the said [*testator*]; And also from time to time to make any rules and regulations to be observed by the children who shall attend the said school, and to enforce the observance of such rules and regulations, and upon breach or non-observance of any of the said rules or regulations by any such child or children, or any other act of misconduct or misbehaviour by him, her, or them respectively, to forbid and prevent the attendance of such child or children: PROVIDED ALSO, and it is hereby further

Proviso that a person named shall be appointed to live in one of the cottages.

Appointment and powers of visitors of school;

to make regulations to be observed by teacher;

to remove teachers, &c.;

to make regulations to be observed by children;

to forbid attendance of children.

Receipt of

agreed and declared, and the [*grantor*] hereby further directs and appoints that the receipt in writing of the said rector of —— aforesaid for the time being for all such sums of money as are hereinbefore directed to be paid to such rector under the trusts hereinbefore declared, shall be sufficient discharges for the same.

VIII. Conveyance in Mortmain of Land for School, &c.

rector to be a discharge.

In witness, &c.

IX. *DEED of* Declaration *of* Trust *by the Master, Fellows, &c., of a College, of a* Fund *raised by Subscriptions, for* Endowment *of a* Chapelry, *and to* provide *a resident* Curate *to perform Services, &c.*

TO ALL TO WHOM THESE PRESENTS SHALL COME (*t*), the Master, Fellows, and Scholars of —— College in the University of Cambridge send greeting: Whereas the said Master, Fellows, and Scholars, and the several persons named in the schedule hereunder written, have contributed the several sums set opposite to their respective names in the same schedule, amounting in the aggregate to the sum of £——, and have purchased therewith in the corporate name of the said Master, Fellows, and Scholars, the sum of £—— 3*l.* per Cent. Consolidated Bank Annuities, to be holden by them or their successors as a trust fund, for the purpose and subject to the provisions hereinafter expressed: NOW THESE PRESENTS WITNESS, that it is hereby agreed and declared by the said Master, Fellows, and Scholars, that they the said Master, &c., and their successors, will stand possessed of and interested in the said sum of £—— 3*l.* per Cent. Consolidated Bank Annuities, as a trust fund for assisting, by means of the annual income thereof, the incumbent for the time being of the said vicarage of —— to keep in actual residence in the parish of —— a curate in holy orders, duly licensed as curate of —— by the Lord Bishop of the diocese of ——, and to provide for the performance of —— full services in the parish church of ——, on every Sunday, and also on every

Exordium.

Recital of contribution and investment of endowment fund.

Testatum.

Declaration of trust to enable vicar to keep a curate;

and provide for services;

(*t*) Stamp, 10*s.*

Stamp.

IX. Endowment of Chapelry.

Christmas Day, Ash Wednesday, Good Friday, and Ascension Day, and one full service at least on every Saints' Day: AND IT IS HEREBY AGREED AND DECLARED, that so often and as long as the said incumbent for the time being shall keep in actual residence in the said parish of —— (due allowance being made for occasional vacancies and absences) a curate in holy orders duly licensed as aforesaid, and shall cause all such full services (each of them including a sermon) as aforesaid to be performed in the parish church of —— aforesaid, so often and so long, but not otherwise, as the said Master, &c., and their successors shall pay the annual income of the said trust funds to the said incumbent for the time being for his absolute benefit: PROVIDED ALWAYS, that so often and so long as the said incumbent for the time being shall not keep in actual residence in the said parish of —— (due allowance being made for occasional vacancies and absences as aforesaid) a curate in holy orders duly licensed as aforesaid, or shall not cause all full services (each of them including a sermon) as aforesaid to be performed in the parish church of —— aforesaid, the said Master, &c., and their successors, shall accumulate the income of the said trust fund by investing the same, and all the resulting income thereof, in their names, in any of the public stocks or funds of Great Britain, or upon Government or real securities in England or Wales, but not in Ireland, in augmentation of the principal of the said trust funds, and to be thenceforth holden as part thereof, and if such accumulation shall be to any extent unlawful, shall to that extent apply the said annual income in support of the schools of the said parish of —— connected with the Church of England, as they in their discretion shall think proper: PROVIDED ALSO, that if the said vicarage of —— shall be at any time divided so that the incumbency of —— shall constitute a separate benefice, the said Master, &c., and their successors shall thenceforth pay the annual income of the said trust fund to the incumbent for the time being of such separate benefice for his absolute benefit, free from the several conditions hereby expressed: PROVIDED ALSO, that so long as the said vicarage shall remain undivided, a certificate in writing, signed by the churchwardens for the time being of the said parish of ——, that during such time as may be specified in such certificate (due allowance being made for occasional vacancies and absences), a curate has been kept in

In case of default of vicar, income of fund to be accumulated.

Proviso in case of division of vicarage.

Proviso as to certificate of due performance of services.

actual residence in the said parish of ——, and all full services (each of them including a sermon) as aforesaid have been performed, such certificate may be accepted by the said Master, &c., and their successors as sufficient evidence of the fact or facts therein professed to be certified, and may be acted on accordingly: PROVIDED ALSO, that if any doubt or difference shall at any time arise whether the conditions upon which the annual income of the said trust fund is hereby made payable to the incumbent for the time being of the said vicarage of —— have been duly performed, or as to any other matter or thing whatsoever relating to any of the subjects of these presents, such doubt or difference shall in every case be referred to the decision of the said bishop of the diocese of —— for the time being, and his decision thereon shall be final and conclusive: PROVIDED ALSO, that it shall be lawful for the said Master, &c., and their successors, at their discretion, to sell out the said sum of £—— Bank Annuities, or any part or parts thereof, and to invest the monies arising therefrom in their corporate names in any of the public stocks or funds of Great Britain, or upon Government or real securities in England or Wales, but not in Ireland, and from time to time to vary and transpose all or any of the stocks, funds, or securities of which the said trust fund shall for the time being consist, into and for other stocks, funds, or securities of the —— or any of the —— aforesaid: PROVIDED ALSO, that if further contributions shall hereafter be made in aid or increase of the said trust fund, the amount of every such contribution shall be received by the said Master, &c., and invested by them in their corporate names in or upon any stocks, funds, or securities of the description or any of the descriptions aforesaid, with power of varying or transposing the same in manner aforesaid, and shall henceforth be considered as part of the said trust fund, and subject accordingly to all the trusts and provisions of these presents: PROVIDED ALSO that the receipt or receipts in writing of the said Master, &c., and their successors, for any money payable

Proviso for submitting disputes to bishop.

Power to sell out stock and re-invest.

Proviso as to further contributions.

Receipt clause (*u*).

(*u*) The receipt clause may, if desired, be omitted in reliance on sect. 36 of the Conveyancing and Law of Property Act, 1881 (45 & 46 Vict. c. 41). So also the indemnity and reimbursement clauses: see stat. 22 & 23 Vict. c. 35, s. 31. They may, however, require to be inserted in the case of a similar endowment abroad.

IX. Endowment of Chapelry.

to them respectively by virtue of these presents, or in or about the execution of any of the trusts or powers thereof, shall effectually discharge all persons paying the same from seeing to the application thereof, or being answerable for any loss or misapplication thereof: PROVIDED ALSO, that the said Master, &c., and their successors, shall not be accountable for any involuntary losses which may happen in or about the execution of any of the trusts or powers of these presents: AND that it shall be lawful for them, out of the monies which shall come to their respective hands by virtue of these presents, to reimburse themselves respectively all costs, charges, and expenses relating thereto.

Indemnity clause.

Reimbursement clause.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*Names of the Contributors of the above-mentioned sum of* £——, *and the amounts of their respective contributions.*)

X. *DEED of* DECLARATION *of* TRUST *of* STOCK *for the* FOUNDATION *of* SCHOLARSHIPS.

Recitals: of foundation of school;

TO ALL TO WHOM THESE PRESENTS SHALL COME (*x*), [*donor*], &c., sends greeting: WHEREAS in the year —— a school was founded at ——, in the parish of ——,

of constitution of parish;

in the county of ——: AND WHEREAS in or about the year —— a church, dedicated to St. ——, was, pursuant to the provisions of certain Acts of Parliament passed in the reign of Queen Anne, built in the said parish, and the district surrounding the said church was, pursuant to the provisions of the said Acts, ascertained and constituted a parish, which has since been known as the parish of ——, in the county of ——: AND WHEREAS the said school has, since the erection of the said church and the constitution of the said lastly-mentioned parish, been conducted within the precincts thereof, and has been and is known as the —— school, and is at present carried on in the buildings which, in pursuance of a

of present name and site of school;

Stamp.

(*x*) Stamp, 10*s*.

X. Endowment of Scholarships.

faculty in that behalf granted by the right reverend John Lord Bishop of ——, dated the —— day of ——, 18—, were built on ground formerly part of the burial ground surrounding the said church: AND WHEREAS the said schools are carried on in part by means of the income of funds vested in trustees for that purpose, and in part by other means: AND WHEREAS the present trustees of the lastly-mentioned trust funds are [*trustee*], of, &c., and [*trustee*], of, &c.: AND WHEREAS the said [*donor*] is desirous of founding two scholarships, the fund for the endowment whereof shall be such, and shall be so provided as is hereinafter mentioned, the trusts upon which the same fund shall be held being such as are hereinafter declared concerning the same: AND WHEREAS the said [*donor*] has before the date of these presents requested the said [*trustees*], and they have consented, to become the first trustees of the said scholarships and the said endowment thereof: AND WHEREAS the said [*donor*] has purchased in, or caused to be transferred into, the joint names of the said [*trustees*] in the books of the Governor and Company of the Bank of England the sum of £—— 3*l.* per Cent. Consolidated Bank Annuities: NOW THESE PRESENTS WITNESS, that in order to complete his provision for the founding of the said scholarships which the said [*donor*] is so desirous to found as aforesaid, the said [*appointor*] hereby declares that the said [*trustees*] and the survivors and survivor of them, and the executors or administrators of such survivor, and such other person and persons as shall from time to time become trustees of these presents (all which trustees hereby named, and other persons who shall from time to time be for the time being trustees hereof, are hereinafter, when not otherwise designated, called the trustees), do and shall henceforth stand possessed of and interested in the said sum of £—— (hereinafter called the said trust fund), and the dividends and income thereof, as the endowment of two scholarships, to be called the —— Scholarships, to the intent that the trustees shall from time to time dispense the benefit of the said scholarships, and administer the affairs thereof, and stand possessed of the said trust fund and the income thereof, in accordance with the directions and upon the trusts, and with and subject to the provisoes and declarations hereinafter given, expressed, and contained, to and concerning the trustees, the said scholar-

of endowment of school;

of desire of appointor to found scholarships;

of transfer of stock into names of trustees.

Testatum.

Declaration of trust.

X. Endowment of Scholarships.

ships, and the said trust fund and the income thereof respectively (that is to say):—

Eligibility of candidates.

1. The boys and girls eligible in every year for the said scholarships shall be such as shall have attended the said —— School in the said parish of —— for at least —— years before the day of election, and shall then be under the age of —— years respectively;

Examination by Her Majesty's inspector.

2. The trustees shall in every year request her Majesty's Inspector of Schools, who shall inspect the said school, or other (if any) the official inspector or examiner thereof for the time being, to certify in writing to the trustees which of the boys and girls then eligible for the scholarship shall have shown himself or herself most efficient in the several branches of learning for the time being taught in the said school;

Examination by person appointed by trustees.

3. If her Majesty's said Inspector of Schools, or other (if any) such official inspector or examiner, shall not comply with such request as aforesaid, or if in any year or years there shall not be any such inspector or examiner as aforesaid, then and in every or any such case the trustees shall at such time, by such person or persons, and in such manner as they or the greater number of them shall choose, cause, first, the boys and girls then eligible for the said scholarships to be examined in the several branches of learning for the time being taught in the said school, and secondly, the merit of the boys and girls so examined according to their proficiency in the same branches of learning, as shown by such examination as aforesaid, to be reported in writing to the trustees by the person or persons who shall have conducted the examination;

Time of election.

4. An election to the said scholarships shall be made on the —— day of —— in every year;

Election by trustees.

5. The trustees shall on every day of election elect to one of the said scholarships the boy or girl eligible thereto as aforesaid, who shall have been by such inspector or official examiner as aforesaid, or by such examiner appointed by the said trustees as aforesaid, certified to be the most proficient in the said several branches of learning as aforesaid;

Application of endowment fund.

6. Out of the yearly income of the trust fund the trustees shall defray all such (if any) expenses as shall be by them incurred in the administration of the trust fund, or in the performance of the trust hereby created, and particularly the expenses which may from time to time be incurred in ap-

pointing new trustees of the trust fund, and in effecting the transfers of the trust fund thereby rendered necessary.

X. Endowment of Scholarships.

7. Half of the net residue of the said income shall in every year be paid to each of the two holders of the said scholarships for the time being;

Amount of scholarships.

8. Every boy and girl who shall be elected to one of the said scholarships shall be entitled to hold the scholarship to which he or she shall be so elected during —— years from the —— day of —— next succeeding the day whereon he or she shall have been elected, if he or she shall so long continue to attend the said school, to be diligent in learning, and to conduct himself or herself properly;

Duration of scholarships.

9. If the master or mistress of the said school for the time being shall at any time or times report in writing to the trustees that any scholar has been irregular in attendance at the said school, or not diligent in learning, or has not conducted himself or herself properly, then and so often as the same shall happen it shall be lawful for the trustees in their absolute discretion, but in no wise incumbent on them, to declare that such scholar has forfeited his or her scholarship, and either thereupon, or upon any scholar ceasing to attend the said school, the scholar concerning whom the master or mistress shall have made such a report as aforesaid, or who shall have so ceased to attend the said school as aforesaid, as the case may be, shall cease to be entitled to receive any of the subsequently accruing income of the trust fund;

Forfeiture of scholarships by misconduct, &c.

10. During any vacancies of the scholarships respectively the trustees shall accumulate the accruing income of the trust fund, and the accumulations may subsequently, at the discretion of the trustees, be treated either as an addition to the capital of the trust fund, or as if the same were income either of the year in which the same accrued, or of any subsequent year;

Accumulation during vacancies in scholarships.

11. The power of appointing a new trustee or new trustees of these presents shall be exercisable by the continuing trustees or trustee for the time being, and if there shall not be any continuing trustees or trustee, then by the refusing or retiring trustees or trustee (if any), and if able and willing to exercise the power or otherwise by the acting executors or executor, or administrators or administrator of the trustee, who continuing to be such until his death, shall have then last previously died; And upon every or any such appoint-

Appointment of new trustees.

X. Endowment of Scholarships.

ment the number of trustees may be augmented or reduced: PROVIDED THAT the number shall not on any such appointment be reduced below three, and that so often as by death or otherwise the number of trustees shall be reduced to less than three, a new trustee or new trustees shall forthwith be appointed.

IN WITNESS, &c.

NOTICES.

General remarks upon notices.

WERE it not that in several parts of this work reference has been made to the present title, the Editor would have felt disposed to omit it altogether, because so little attention to technical form is requisite in preparing notices, that they do not seem to constitute a necessary part of a collection of precedents. All that is requisite, where the object of the notice is to communicate a fact (and the instruments usually denominated notices seldom have any other operation), is, that the fact should be correctly and clearly stated. The subsequent forms of notices will be found, for the most part, to be suggested by the provisions contained in the precedents, or the doctrines discussed in the dissertations and notes of the present work. The transactions to which they relate are, principally, between grantor and grantee of annuity; landlord and tenant; mortgagor and mortgagee; partners; exercise by tenant for life of statutory powers; vendor and purchaser; and some miscellaneous matters; and they are classed accordingly. In many cases, it may not be essential that the notice should be in *writing;* but it is always advisable to make a written rather than an oral communication, for the sake of facility of proof; and, for the same reason, a notice should be delivered, not by the person on whose behalf it is given, but by a third person who should keep a copy, on which he should indorse a memorandum, showing when and to whom he delivered it. The delivery, when practicable, should be to the party to whom it is addressed, personally (*y*).

Notices do not require to be stamped.

(*y*) See sect. 67 of the Conveyancing and Law of Property Act, 1881 (45 & 46 Vict. c. 41), as to service of notices required or authorised by that Act.

PRECEDENTS.

I. *GRANTOR of* Annuity *to* Grantee, *of intention to re-purchase* (*z*).

I HEREBY give you notice, that, pursuant to a power contained in an indenture of grant of annuity, dated the —— day of ——, executed by you to me, I intend to re-purchase the said annuity at the expiration of three calendar months from the date hereof. And that I shall be prepared to pay to you at that time all arrears of the said annuity, together with the sum of £——, the price stipulated for the redemption thereof by the terms of the said indenture.

As witness my hand this —— day of ——.

To Mr. [*Grantee*]. [*Signature of Grantor*].

II. *LANDLORD to* Tenant *from Year to Year, to* Quit *on a* Prescribed Day (*a*).

I HEREBY [as agent for and on behalf of (*landlord*) of, &c.] give you notice to quit and deliver up on the —— day of

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(*z*) For form of grant of annuity with power to re-purchase, see *ante*, Vol. I. p. 714.

(*a*) Vide *ante*, Vol. III. p. 276 *et seq.* In the absence of any express agreement respecting the power of determining the tenancy (other than an agricultural holding) by notice, it may be determined by either party, at the expiration of any year of the tenancy, by giving half a year's notice, which half year is computed in the customary manner:—Thus, a tenancy commencing at Lady-day may be determined by a notice delivered on or before the preceding Michaelmas-day, without regard to the number of days intervening between the two periods: *Roe* d. *Durant* v. *Doe*, 6 Bing. 574.

In the case of holdings falling within the Agricultural Holdings

II. To Tenant to Quit.

——, 18—, the possession of all that messuage or tenement, situate in —— street, in the city of ——, held by you of me as tenant from year to year.

As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Tenant*].

[*Signature of Landlord or of Agent*, "Agent for the said (*Landlord*)"]

III. *LANDLORD to* TENANT *from Year to Year, determining* TENANCY, *the Time of the Commencement of which is unknown* (*b*).

I HEREBY give you notice to quit and deliver up the —— farm and lands in the parish of —— in the county of ——,

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Act, 1883 (46 & 47 Vict. c. 61), a year's notice to quit is necessary under sect. 33 of the Act (*set out, ante*, Vol. III. p. 286), unless the landlord and tenant by writing under their hands agree that this section shall not apply, in which case a half year's notice is sufficient.

As to notices to quit, where the time of the commencement of the tenancy is unknown.

(*b*) It not unfrequently happens, where persons have been in possession for a long period, under a tenancy from year to year, originally created by oral agreement, that the landlord is unable to ascertain at what period it commenced, particularly if, pending the tenancy, the ownership in the property has changed hands. In such a case, the landlord cannot safely give a notice to quit in terms more specific than those of the precedent in the text, which has been held to be sufficient: *Doe* d. *Phillips* v. *Butler*, 2 Esp. 589; *Doe* d. *Campbell* v. *Scott*, 4 Moo. & P. 20; *Doe* v. *Smith*, 5 A. & E. 350; *et vide ante*, Vol. III. p. 283. It throws upon the tenant the task of finding out when the tenancy commenced, and delivering up the possession accordingly, on pain of being ejected, or made liable to pay double the annual value to the landlord, under the statute 4 Geo. 2, c. 28: *vide ante*, Vol. III. p. 304. The form of course might easily be adapted to the converse case of the tenant determining the tenancy under similar circumstances. But a notice to quit at a period at which the tenancy does not expire, given by the tenant under an erroneous impression, does not determine the tenancy, although accepted by the landlord; being bad as a notice to quit, and bad as a surrender, because it is to take effect *in futuro*: *Doe* v. *Milward*, 3 M. & W. 328.

III. To Tenant to Quit (Special).

now held of me by you as tenant from year to year, at the expiration of the year of your tenancy, which shall expire at or next after the end of one half-year [*or* year (*c*)] from the time of service hereof.

As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Tenant*]. [*Signature of Landlord*].

IV. *TENANT from Year to Year to* LANDLORD, *of* QUITTING.

I HEREBY give you notice that I shall quit and deliver up to you on the —— day of ——, 18—, the possession of the messuage, farm, and lands, in the parish of ——, in the county of ——, now held by me of you as tenant from year to year.

As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Landlord*]. [*Signature of Tenant*].

V. *LESSEE to* LESSOR, *determining* LEASE (*d*).

IN pursuance of a power or proviso contained in an indenture of lease executed by you to me, dated the —— day of ——, I hereby give you notice that it is my intention to determine the same on the —— day of ——; and that I shall deliver up to you the possession of the messuage and tenement therein comprised, on the said —— day of ——.

As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Lessor*]. [*Signature of Lessee*].

(*c*) A year's notice is generally necessary in the case of an agricultural holding: see *ante*, p. 100, note (*a*).

(*d*) A notice to quit at the end of the first seven or fourteen years pursuant to a proviso in a lease is sufficient, although the proviso is not referred to: *Giddens* v. *Dodd*, 3 Drew. 485.

VI. *LESSOR to* LESSEE *to* REPAIR.

PURSUANT to a covenant contained in the indenture of lease executed by me to you, dated the —— day of ——, 18—, I hereby give you notice and require you, within —— calendar months from the date hereof, to put the messuage or dwelling-house thereby demised in complete and substantial repair; and particularly, that you do execute the repairs enumerated in the schedule hereto.

As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Lessee*]. [*Signature of Lessor*].

THE SCHEDULE ABOVE REFERRED TO.

VII. *LESSOR to* LESSEE *to* REMEDY *and pay* COMPENSATION *for* BREACH *of* COVENANT *to* REPAIR, *previous to re-entry* (*e*).

I HEREBY give you notice that in the indenture of lease executed by me to you, dated the —— day of ——, 18—, was contained a covenant on your part that you would during the term thereby granted [*set out fully covenant to repair as in the lease*]; and I further give you notice that the said covenant has not been duly performed on your part, and that the particular breaches thereof complained of are the committing or permitting the several acts of waste and dilapidations enumerated in the schedule hereunder written: And I hereby require you to remedy the said breaches of covenant so far as the same are capable of remedy, and to make to me compensation in money for such breaches as are not capable of remedy.

As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Lessee*]. [*Signature of Lessor*].

THE SCHEDULE ABOVE REFERRED TO.

(*e*) As to notice to lessees to remedy and compensate for breaches of covenant before re-entry and enforcing forfeiture of leases, see sect. 14 of the Conveyancing and Law of Property Act, 1881, set out and considered, *ante*, tit. LEASES, Vol. III. pp. 256 *et seq.* Relief from forfeiture.

VIII. *LESSEE to* LESSOR *of an intention to call for a* RENEWAL *of* LEASE (*f*).

I HEREBY give you notice, that, in consequence of the decease of [A. B.], one of the *cestuis que vie* named in the indenture of lease executed by you to me, dated the —— day of ——, it is my intention pursuant to the covenant or provision for renewal therein contained, to accept and take a renewed lease of the messuage therein comprised; and I nominate my son [*son*], aged —— years on the —— day of ——, as the substituted *cestui que vie* to be named in such renewed lease; and I further give you notice, that I am ready to surrender my present lease, and to pay the premium or fine for the granting of the said renewed lease, as required by the said covenant for renewal.

As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Lessor*]. [*Signature of Lessee*].

IX. *LESSEE to* LESSOR, *of assigning* LEASE (*g*).

I HEREBY give you notice, that, by an indenture dated the —— day of —— 18—, [*or* already prepared, and intended to be executed forthwith, and to bear even date herewith] and made [*or* purporting to be made] between me of the one part, and [*assignee*] of the other part, the messuage, being No. —, in —— Place, in the parish of ——, in the county of ——, demised by you to me, has been [*or* is intended or expressed to be] assigned by me to the said [*assignee*], for all the residue of the term granted by you to me.

As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Lessor*]. [*Signature of Lessee*].

(*f*) *Vide ante*, Vol. III. pp. 217 *et seq.*

(*g*) The words within brackets will be used where the lessee is bound to give the notice previously to the assignment.

X. *TRUSTEE of* Bankrupt Lessee *to* Lessor *of intention to* Disclaim *the* Lease (*h*).

In the High Court of Justice,
In Bankruptcy.

No. —, of 18—.

Re [*Debtor*].

TAKE NOTICE that I intend to disclaim the lease dated the —— day of ——, 18—, whereby [*here specify property to let*] was let to the above-named debtor at a rent of £——.

If you do not within seven days after the service of this notice upon you require me by notice in writing to bring the matter before the Court, I hereby disclaim the said lease as from the expiration of the said seven days.

Dated, &c.

To Mr. [*Lessor*]. [*Signature of Trustee*], Trustee.

XI. *LESSEE to* Lessor *of Intention to purchase the* Inheritance, *pursuant to a* Power *in the* Lease (*i*).

I HEREBY give you notice, that, pursuant to a power contained in the indenture of lease, dated the —— day

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(*h*) This is the form of notice of disclaimer given in the Appendix to the Bankruptcy Rules, 1883: see Form 76. If the bankruptcy petition has been presented in a County Court the title will be—

In the County Court of ——, holden at ——,
In Bankruptcy.

No. — of 18—.

Re [*Debtor*].

As to the effect of disclaimer by a trustee in bankruptcy, see *ante*, Vol. II. p. 844.

(*i*) This notice, and the power in the precedent of the lease referred to (*supra*), to which it is adapted, seem to suppose the title to have been known to, and accepted by, the intending purchaser when the lease was granted. Where this is not the case, a sufficient interval should be allowed for the examination of the title, an abstract of which should be delivered to the lessee within a definite period after the intimation of his intention to become the purchaser.

As to investigation of title by purchasing lessee.

XI. To Lessor of Intention to Purchase Reversion.

of ——, 18—, executed by you to me, of certain messuages and hereditaments in the parish of ——, in the county of ——, I elect and agree to purchase the inheritance in fee simple of the said premises, at the price or sum of £——, and that I shall be prepared to pay to you the said purchase-money, and in all respects to comply with the terms prescribed by the said indenture of lease, on the —— day of —— next, on your executing to me an effectual conveyance and assurance of the said premises in fee-simple, free from incumbrances; for which purpose I now send you the draft of a deed of conveyance, which I request you to return to my solicitor, with a notification of your approbation thereof, or any objections you may have thereto, in sufficient time to admit of the completion of the purchase at the time aforesaid. And I request that you will forthwith deliver to me an abstract of the instrument or instruments, if any, affecting the title, since the granting of the said lease, and that you will be prepared to deliver to me the title-deeds of the said premises, on the payment of the purchase-money, as aforesaid.

As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Lessor*]. [*Signature of Lessee*].

XII. *LANDLORD to* SHERIFF, *of* RENT *being due from* TENANT, *whose* GOODS *he has taken in* EXECUTION (*k*).

I HEREBY give you notice, that the sum of £——, being the amount of one year's rent to the 29th day of September last, is owing to me from [*execution debtor*], for the messuage and warehouse, situate in —— Street, in the

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(*k*) *Vide ante*, Vol. III. p. 174.

The stat. Ann. 8, c. 14, has been held to apply, where the execution debtor is an under-tenant of apartments only: *Thurgood* v. *Richardson*, 5 Moo. & P. 270.

city of ——, in his occupation, as my tenant from year to year. XII. Landlord to Sheriff.

As WITNESS my hand, this —— day of ——, 18—.

To ——, Esq. [*Signature of Landlord*].

Sheriff of the county of ——.

XIII. *MORTGAGEE to* TENANT *to pay the* RENT *to him* (*l*).

I HEREBY give you notice, that by an indenture, dated the —— day of ——, 18—, and made between [*mortgagor*], of ——, of the one part, and me, the undersigned [*mortgagee*], of the other part, the messuage in your occupation was conveyed by the said [*mortgagor*] to me in fee simple by way of mortgage, and the same is now vested in me by virtue of the same indenture. And I require you to pay to me the rent now due, and hereafter to become due, in respect of the said premises.

As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Tenant*]. [*Signature of Mortgagee*].

XIV. *RECEIVER for* MORTGAGEE *to* TENANT.

I HEREBY give you notice, that by an indenture dated the —— day of —— last, made between [*mortgagor*], of ——, of the first part, [*mortgagee*], of ——, of the second part, and me, the undersigned [*receiver*], of the third part, the messuage and piece of ground situate in the parish of ——, in the county of ——, in your occupation, were, with other hereditaments, conveyed by the said [*mortgagor*] unto and to

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(*l*) As to a right of a mortgagee to rent under lettings prior and posterior to the mortgage respectively, see *ante*, Vol. III. p. 79.

XIV. Receiver to Tenant.

the use of the said [*mortgagee*] in fee simple by way of mortgage, for securing the sum of £—— and interest; and by the same indenture full power and authority were given to me, as the agent and receiver of the said [*mortgagee*], to receive the rents thereof, and to give effectual discharges for the same. And I accordingly require you to pay to me the rent now due, and hereafter to become due from you, in respect of the said premises accordingly.

As WITNESS my hand, this —— day of ——.

To Mr. [*Tenant*]. (Signed) [*Receiver*].

XV. *SECOND to* FIRST MORTGAGEE.

I HEREBY give you notice, that by an indenture dated the —— day of ——, and made between [*mortgagor*], of the one part, and me, the undersigned [*mortgagee*], of the other part, the several messuages, lands, and hereditaments, situate in ——, now in mortgage to you, were conveyed to me by the said [*mortgagor*] in fee simple by way of mortgage, for securing the sum of £—— and interest.

As WITNESS my hand, this —— day of ——.

[*Signature of Second mortgagee*].

To Mr. [*First mortgagee*].

XVI. *ASSIGNEE of a* REVERSIONARY INTEREST *in* MONEY *in the* FUNDS, *to the* TRUSTEES *in whose Names the* STOCK *is standing* (*m*).

I HEREBY give you notice, that by an indenture dated the —— day of ——, and made between [*assignor*], of, &c.,

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(*m*) As to the necessity and effect of giving such a notice, *vide ante*, Vol. III. pp. 953 *et seq.*

XVI. Assignee of Reversionary Interest to Trustees.

of the one part, and me, the undersigned [*assignee*], of the other part, all the share, right, and interest of the said [*assignor*], under and by virtue of the will of [*testator*], late of ——, deceased, of and in the sum of £2,500 3*l.* per Cent. Consolidated Annuities, now standing in your names at the Bank of England, and held by you, subject to the trusts of the said will, were assigned by the said [*assignor*] to me absolutely [*or*, by way of mortgage, for securing certain monies advanced by me to the said [*assignor*] ,and interest] (*n*).

As WITNESS my hand, this —— day of ——, 18—.

To Messrs. [*Trustees*]. [*Signature of Assignee*].

Persons giving notice not bound to point out the duty of the person receiving it.

(*n*) Where notice or intimation is given of a fact, the person receiving it is bound to inform himself of all the legal consequences resulting from that fact, the rule being *ignorantia legis non excusat;* and, therefore, it is unnecessary for the person giving the notice to point out any act to be done, or omitted to be done, by the person receiving it.

Sometimes, however, it may be advisable to add a few words, as explanatory of some point of duty of the person to whom it is addressed, especially where such duty is not so obvious as to exclude the probability of its being misapprehended. Thus, in the present case, one of the effects of an assignment by a person taking a partial interest in a particular fund seems to be, to incapacitate him from concurring in appointing new trustees, varying funds, &c. (*vide ante*, Vol. III. pp. 721 *et seq*), or exercising any other powers by which such interest is liable to be affected; and yet this is a point which is very likely to escape attention. If, therefore, by the instrument creating the interest which is the subject of the assignment, any such powers are to be exercised by or with the concurrence of the assignor, it may be proper to add the following clause to the notice in the text:—

"And I hereby give you notice not to transfer the said £2,500 3*l.* per Cent. Consolidated Annuities to any new trustee or trustees, or change the investment, by virtue of any power contained in the said will, or exercise any other power or authority whatsoever therein contained affecting the share or interest of the said [*assignor*] in the said 3*l.* per Cent. Consolidated Annuities without my consent in writing."

XVII. *ASSIGNEE of* BOND *to* OBLIGOR.

I HEREBY give you notice, that by an indenture dated the —— day of —— last, made between [*obligee*], of ——, of the one part, and me, the undersigned [*mortgagee*], of the other part, the principal sum of £——, the payment whereof is secured by a bond or obligation executed by you to the said [*obligee*], dated the —— day of ——, 18—, together with all interest due or to become due thereon, as from the —— day of —— last, has been assigned by the said [*obligee*] to me absolutely [*or*, by way of mortgage for securing certain monies owing by him to me, and interest thereon].

As WITNESS my hand, this —— day of ——.

To Mr. [*Obligor*]. (Signed) [*Assignee*].

XVIII. *ASSIGNEE of* POLICY *of* LIFE ASSURANCE *to an* INSURANCE OFFICE *pursuant to the Policies of Assurance Act*, 1867 (*o*).

To the —— Assurance Society.

I HEREBY give you notice, that by an indenture dated the —— day of ——, 18—, and made between [*parties*], a policy of assurance, effected by the said [*mortgagor*] on his life in your office, dated the —— day of ——, 18—, numbered —— in your books, and also the sum of £—— thereby assured, and all monies to be received or become payable under or by virtue of the said policy, by way of bonus or otherwise, have been assigned by the said [*mortgagor*] to me absolutely [*or*, by way of mortgage for securing certain monies owing by him to me and interest thereon]. And I request you to acknowledge in writing the receipt of this notice.

Dated the —— day of ——, 18—.

[*Signature of Mortgagee's Solicitors*],
Solicitors for the said [*mortgagee*].

(*o*) As to the necessity for giving notice of the assignment of a policy of life assurance, see *ante*, Vol. III. pp. 830, 831, tit. MORTGAGES.

XIX. *MORTGAGOR to* MORTGAGEE, *of Intention to pay off* MORTGAGE DEBT.

I HEREBY give you notice, that I shall pay the principal sum of £—— and interest owing from me to you, secured by an indenture of mortgage dated the —— day of ——, at the expiration of six calendar months from the date hereof.

As WITNESS my hand, this —— day of ——.

To Mr. [*Mortgagee*]. [*Signature of Mortgagor*].

XX. *MORTGAGEE to* MORTGAGOR *of Intention to* SELL, *unless* PRINCIPAL *and* INTEREST MONEYS *be paid at a certain Time.*

I HEREBY give you notice, that, I require you to pay off within —— calendar months from the date hereof (*p*), the principal and interest moneys (*q*), owing to me by virtue of the indenture of mortgage executed by you to me, dated the —— day of ——, 18—, and further that in default of your so doing, shall immediately proceed to a sale of the messuages and hereditaments in the said indenture comprised, or such part or parts thereof as I may think fit.

As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Mortgagor*] (*r*). [*Signature of Mortgagee*].

(*p*) To enable a mortgagee to exercise the statutory power of sale, three months' notice is required, unless otherwise provided by the mortgage deed: *ante*, Vol. III. p. 881.

(*q*) Add "and costs," if any.

(*r*) If it is not known who are the persons interested in the equity of redemption, the notice should be left on the premises (see sect. 67 of the Conveyancing and Law of Property Act, 1881, *ante*, Vol. III. p. 924), addressed as follows:—

"To Mr. [*Mortgagor*] if living, or his legal representatives, or other the persons interested in the equity of redemption of the messuage and premises referred to in the above notice."

XXI. *MORTGAGEE to* MORTGAGOR, *requiring immediate* PAYMENT *where the advance and interest are payable on* DEMAND.

I HEREBY demand of you immediate payment of the principal sum of £——, now owing from you to me on the security of an indenture of mortgage, dated the —— day of ——, 18—, and the interest at the rate of —— per cent. per annum as from the —— day of —— last, owing in respect thereof.

As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Mortgagor*]. [*Signature of Mortgagee*].

XXII. *ONE PARTNER to another, of* INTENTION *to dissolve* PARTNERSHIP.

UNDER and by virtue of the power in this behalf contained in the deed or articles establishing the partnership subsisting between you and me, dated the —— day of ——, 18—, I hereby give you notice, that it is my intention to dissolve the said partnership on the —— day of —— next.

As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Partner*]. [*Signature of Partner*].

XXIII. *ONE PARTNER to his Co-partners, of Intention to retire from the* PARTNERSHIP.

GENTLEMEN,

Being desirous wholly to determine our present partnership so far as relates to myself on the —— day of —— next, and to retire from the same on that day, I hereby, pursuant to the power enabling me so to do contained in our deed or articles of partnership, dated the —— day of ——,

XXIII. To Dissolve Partnership.

18—, give you notice in writing of such my desire: And I declare that our partnership shall, so far as relates to myself, be hereby wholly determined on the said —— day of ——, and that I shall retire from the same on that day.

I am, &c.

To Messrs. ——. [*Signature of Partner.*]

Dated, &c.

XXIV. *ONE PARTNER to another, dissolving* Partnership, *in consequence of* Breach *of* Articles.

I HEREBY give you notice, that, in consequence of your having broken the —— article of our partnership deed, bearing date the —— day of ——, whereby it is provided (*transcribe article*), I hereby, in pursuance of the power in that behalf contained in the said deed, dissolve the said partnership from the —— day of —— next, on which day I shall be prepared to pay you the amount declared to be the value of your share in the partnership effects at our last annual settlement of accounts, and interest thereon, as provided by the said partnership deed.

As witness my hand, this —— day of ——, 18—.

To Mr. [*Partner*]. [*Signature of Partner.*]

XXV. *ONE PARTNER to another, dissolving a* Partnership, *subsisting without* Deed (*s*).

I HEREBY give you notice, that the partnership subsisting between you and me in the trade or business of —— is here-

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(*s*) As to oral partnerships being dissoluble by either partner, *vide post*, tit. Partnership.

XXV. Dissolving Partnership.

by dissolved: And I request that you will concur with me in taking the necessary steps for winding up the affairs of the said joint concern, in order that all the engagements thereof may be forthwith discharged, and the remaining effects disposed of and converted, and the moneys arising therefrom divided between us in proportion to our respective shares therein.

As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Partner*]. [*Signature of Partner.*]

XXVI. *OF Dissolution of* PARTNERSHIP, *to be inserted in the* LONDON GAZETTE.

NOTICE is hereby given, that the partnership lately subsisting between us in the city of Bristol, in the trade or business of merchants, was this day dissolved by mutual consent [*or* "effluxion of time," *or otherwise, as the case may be*].

As WITNESS our hands, this —— day of ——, 18—.

(Signed) [A. B.]
[C. D.]

XXVII. *PARTNERS, after Dissolution of* PARTNERSHIP, *to a* DEBTOR *of the Firm to pay Debt to the joint Agent of the Partners.*

WE hereby give you notice that the partnership lately subsisting between us under the firm of —— & Co., was dissolved on the —— day of —— last, and we request you to pay the debt owing by you to us to Mr. [*receiver*], who is duly authorised to receive the same, and whose receipt shall be your sufficient discharge.

As WITNESS our hands, this —— day of ——, 18—.

To Messrs. [*Debtors*]. (Signed) [A. B.]
[C. D.]

XXVIII. *NOTICE by a* Tenant for Life *to the* Trustees of the Settlement *of his* General Intention *to* Sell, *&c., under the* Settled Land Acts (*t*).

To [*trustee*] one of the trustees, *or* [Messrs. —— & Co., the solicitors of the trustees] of the settlement created by

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(*t*) The following are the provisions contained in the Settled Land Acts of 1882 and 1884, with respect to the notices required to be given by tenants for life of their intention to exercise their statutory powers.

By sect. 45 of the Act of 1882 (45 & 46 Vict. c. 38), it is enacted as follows :—

"(1.) A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage, or charge, shall give notice of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in the United Kingdom, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter, containing the notice, addressed to the solicitor at his place of business in the United Kingdom, every letter under this section being posted not less than one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same. Notice to trustees.

"(2.) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.

"(3.) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section."

By sect. 5 of the Settled Land Act, 1884 (47 & 48 Vict. c. 18), it is enacted :—

"(1.) The notice required by sect. 45 of the Act of 1882, of intention to make a sale, exchange, partition or lease, may be notice of a general intention in that behalf.

"(2.) The tenant for life is, upon request by a trustee of the settlement, to furnish to him such particulars and information as may reasonably be required by him from time to time with reference to sales, exchanges, partitions or leases effected, or in progress, or immediately intended.

"(3.) Any trustee, by writing under his hand, may waive notice, either in any particular case, or generally, and may accept less than one month's notice.

"(4.) This section applies to a notice given before, as well as to a notice given after, the passing of this Act.

"(5.) Provided that a notice, to the sufficiency of which objection has been taken before the passing of this Act, is not made sufficient by virtue of this Act."

It will be observed that sub-sect. (1) of this section does not

XXVIII. By Tenant for Life of General Intention to Sell, &c.

an indenture, dated, &c. [*or* by the will, dated, &c., and proved, &c., of [*testator*], late of ——, Esquire, deceased].

I HEREBY give you notice, pursuant to the provisions in this behalf contained in sect. 45 of the Settled Land Act, 1882, and sect. 5 of the Settled Land Act, 1884, respectively, that it is my general intention, from time to time, as and when opportunity shall occur, to make sales, exchanges [partitions] and leases of the settled lands comprised in the indenture [*or* will] above referred to, or such part or parts thereof, or such easements, rights, or privileges over or in relation to the same as I shall think proper.

As WITNESS my hand, this —— day of ——, 18—.

[*Signature of Tenant for Life.*]

XXIX. *NOTICE by* TENANT FOR LIFE *to the* TRUSTEES OF THE SETTLEMENT *of his* INTENTION *to* MORTGAGE *under the* SETTLED LAND ACT, 1882, *sect.* 18.

To [*trustee*], &c., *as in preceding Precedent.*

I HEREBY give you notice, pursuant to sect. 45 of the Settled Land Act, 1882, that it is my intention to mortgage under the power given me by sect. 18 of that Act, the lands mentioned in the schedule hereto, part of the settled lands comprised in the indenture [*or* will] above referred to, to raise money for enfranchisement of certain copyhold or customary lands, parcel of the manor of ——, in the county of ——, other part of the said settled lands.

As WITNESS my hand, this —— day of ——, 18—.

[*Signature of Tenant for Life.*]

THE SCHEDULE ABOVE REFERRED TO.

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apply to mortgages or charges by the tenant for life: specific notice of an intention to mortgage or charge the settled lands must therefore still be given: see *Ray's Settled Estates*, 25 Ch. D. 464. The power of mortgaging or charging only arises where money is required for enfranchisement or equality of exchange or partition: see sect. 18 of the Act of 1882. As to waiver of notice by trustees, see *post*, tit. SETTLEMENTS.

XXX. *PURCHASER of an* EQUITY *of* REDEMPTION, *to* MORTGAGEE.

I HEREBY give you notice, that by an indenture dated the —— day of —— last, made between [*vendor*], of ——, of the one part, and me, the undersigned [*purchaser*], of the other part, all and singular the lands and hereditaments situate in the parish of ——, in the county of ——, now in mortgage to you from the said [*vendor*], for securing £—— and interest, were, for a pecuniary consideration, absolutely conveyed and assured unto and to the use of me, the said [*purchaser*], my heirs and assigns for ever, subject to your said mortgage thereon.

As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Mortgagee*]. (Signed) [*Purchaser*].

XXXI. *TO produce* TITLE-DEEDS (*u*).

I HEREBY give you notice, and require you to produce to Mr. [*solicitor*], of ——, solicitor, on the —— day of —— next, on his application at your residence in the city of ——, all the deeds and writings mentioned or referred to in an indenture dated the —— day of ——, by which the same were covenanted to be produced by you to me, [*or*, by which you acknowledged my right to production of the same]; and I hereby undertake to pay you the reasonable costs and charges which may attend the production of the said deeds and writings, on your informing me of the amount thereof.

As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Covenantor*]. (Signed) [*Covenantee*].

(*u*) As covenants for, and acknowledgment of right to production of deeds, see *ante*, Vol. I. p. 251 *et seq.*

XXXII. *LEGATEE to* EXECUTORS, *of* ASSIGNMENT *of* LEGACY (*x*).

I HEREBY give you notice, that by an indenture of assignment dated the —— day of —— instant, made between me, the undersigned [*legatee*], of the one part, and [*purchaser*], of ——, of the other part, the legacy of £——, bequeathed to me by the will of [*testator*], deceased, whereof you are executors, and which will become payable on the decease of [A. B.], has been absolutely assigned by me to the said [*purchaser*], for a valuable consideration; [and I authorise you to pay the said legacy, and the interest (if any) thereon, to the said [*purchaser*], when the same shall become payable].

AS WITNESS my hand, this —— day of ——, 18—.

To Messrs. [*Executors*]. (Signed) [*Legatee*].

XXXIII. *PURCHASER to* VENDOR *that his* MONEY *is producing no* INTEREST (*y*).

I HEREBY give you notice, that the sum of £——, the unpaid portion of the purchase-money, payable by me to you under the contract between us, bearing date the —— day of ——, is now in the hands of my bankers, Messrs. ——, having been appropriated to a special account to my credit, and is producing no interest or advantage whatsoever, [and therefore I shall hold myself discharged from any obligation henceforth to pay interest for the same].

AS WITNESS my hand, this —— day of ——, 18—.

To [*Vendor*]. (Signed) [*Purchaser*].

(*x*) A notice of this kind, of course, may be given either by the assignor or assignee, or by both, or by the agent of either or both. The advantage of its proceeding from the assignor is, that he thereby recognizes the validity of the assignment, affording, therefore, an additional authority to the person to whom it is directed. The notice, however, is more commonly given by the assignee, for whose protection it is required.

(*y*) As to this, see *post*, tit. PURCHASES.

XXXIV. *PURCHASER to* VENDOR, *of Appointment of* REFEREE *to value* FIXTURES (z).

I HEREBY give you notice, that pursuant to the contract entered into on the —— day of ——, for the purchase by me, of you, of a messuage or dwelling-house, situate in ——, and the fixtures therein, I have appointed [*referee*] as my nominee, to make the valuation of the said fixtures; [and I beg to remind you, that unless you also nominate some person on your behalf to concur with the said [*referee*] in making such valuation, within —— days, my said nominee is empowered to proceed therein alone].

As WITNESS my hand, this —— day of ——, 18—.

To [*Vendor*]. (Signed) [*Purchaser*].

XXXV. *VENDOR'S Solicitors to* PURCHASER *to complete* PURCHASE.

SIR,

We hereby give you notice, on behalf of our client, Mr. ——, of, &c., the vendor of the freehold house and lands lately contracted to be purchased by you by an agreement dated the —— day of ——, that the day thereby fixed for completion of the purchase is now long past, and that the vendor is ready and willing to make and execute, and to procure the concurrence of all necessary parties (if any) to a conveyance to yourself, or as you shall direct, of the fee simple in possession of the premises comprised in the said agreement, in accordance with the conditions and stipulations of the same; and that the vendor requires you, within —— days from this date, to complete the purchase, and pay the remainder of the purchase-money with interest up to the day of such completion, as provided by the said agreement: And I further give you notice, that the vendor will hold you liable for all loss or damage which may be incurred by him by

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(z) *Vide post*, tit. PURCHASES.

XXXV. Vendor's Solicitors to Purchaser to Complete Purchase.

reason of any delay or default on your part in completing the said purchase, or otherwise in relation to the said agreement.

We are, &c.,
A. B. & Co.,
Vendor's Solicitors.

To [*Purchaser*], Esq.

XXXVI. *CESTUI* QUE TRUST *to* TRUSTEES, *calling upon them to sell* STOCK, *and place out* MONEYS *on* MORTGAGE (*a*).

I HEREBY authorise and request you to sell the sum of £—— Three Pounds per centum Consolidated Bank Annuities, now standing in your names, as trustees of the will of [*testator*], my late husband, deceased, and to lend the moneys arising therefrom to [*intended mortgagor*], on the mortgage security of two leasehold messuages, situate in ——, held for the remainder of a term of seventy years, commencing in the year 1804, and respectively subject to the several ground rents of £—— and £——.

As WITNESS my hand, this —— day of ——, 18—.

To [*Trustees*]. (Signed) [*Cestui que trust*].

XXXVII. *STATUTORY NOTICE to* CREDITORS (*b*).

[A. B.], deceased.—PURSUANT to the Act of Parliament 22nd and 23rd Vict. c. 35, notice is hereby given that all

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(*a*) A *cestui que trust* is generally required merely to "consent" to the transfer of the trust funds from one security to another, which seems to imply acquiescence, rather than active interference; but, in truth, the intention is, that the choice of the investment shall reside in him; and trustees in such cases seldom do more than act upon the wishes of the parties beneficially interested, provided such wishes are in accordance with the investment clause, and the proposed security is satisfactory.

(*b*) As to the distribution of the assets of a testator or intestate after notice given by the executor or administrator to creditors to send in their claims, see stat. 22 & 23 Vict. c. 35, s. 29.

XXXVII. Statutory Notice to Creditors.

creditors and other persons having any claims or demands upon the estate of [A. B.], late of, &c., deceased (who died on the —— day of ——, 18—, and whose will was proved in the District Registry at ——, of the Probate Division of the High Court of Justice, on the —— day of ——, 18—, by [*executor*], of, &c., the sole executor named in the said will), are hereby required to send in writing full particulars of such claims and demands to the said executor or to the undersigned Messrs. [C. D.] & Co., of No. ——, —— Street, in the city of London, his solicitors, on or before the —— day of —— next, after which date the said executor will proceed to distribute the assets of the said testator among the persons entitled thereto, having regard only to the claims and demands of which he shall then have notice, and that he will not be liable for the assets of the said testator, or any part thereof, so distributed, to any person of whose debt or claim he shall not then have had notice.

Dated this —— day of ——.

[C. D.] & Co.,
Solicitors for the Executor.

PARTITION.

PRELIMINARY REMARKS.

Partition.

General observations on the partition of estates.

THE inconveniences resulting from real estate being held in undivided shares, are such, that usually one of the first considerations which occupy the attention of persons to whom property of this kind has devolved, is, how a partition of it can be best effected. If settlors were apprised of the great expense and trouble attending the division of their estates into numerous portions, and the dissension to which a joint ownership in property generally gives rise in families, they would be less disposed than they commonly are to limit their estates among children or others in this manner. Where the donor's intention is to dispose of his estate, for the benefit of several objects in aliquot shares, especially if they be numerous, or the intended gift is to a class embracing an unascertained number, this purpose may be best accomplished by vesting the property in trustees for sale, giving the *produce* of the sale only among the intended donees. This would not prevent their taking the property in its actual state, if they all concurred in calling upon the trustees to suspend the sale, and convey it to them; but it renders necessary the concurrence of all to prevent a sale, instead of such concurrence being requisite in order to effect it, as would be the case if the property itself were limited directly to the persons intended to be benefited. This is a salutary alteration, because a sale is generally the most advantageous mode of dealing with the property for all; and, therefore, it is desirable that it should not be frustrated by the incompetency or unwillingness of any one of the parties to concur.

Partition by mutual consent.

Where all the joint owners of an estate are desirous to make a partition, and are personally

Partition by Conveyance.

competent to bind their interests, they have only to agree on the allotments to be made to the respective parties, and execute mutual conveyances. It is very usual in such cases to refer it to some person or persons, to divide the estate into as many equal portions as there are aliquot shares, the parties casting lots for the choice of the allotments, or else the allotments are absolutely fixed by the result of the ballot, without the exercise of any choice by either party. Where the parties intend to invest their referee with the discretionary power of fixing the allotments, it is sometimes thought advisable that they, instead of entering into an agreement to execute conveyances in obedience to the award, when made, should all join in conveying the entirety of the property directly to the proposed referee upon trust to convey the several allotments to the respective parties, according to his award. By this means the necessity of any further act of the parties, and consequently any inconvenience arising from the refusal of any of them to concur, is avoided. If any of the joint-owners are unwilling to concur with the rest in making partition, or for any other cause they cannot come to an amicable arrangement for dividing the estate, it is necessary to resort to proceedings in the High Court of Justice for effecting a partition. The same necessity formerly arose where some of the parties were incapable of concurring by reason of infancy or other disability, but is now obviated in such cases by the statutory enactments to be hereafter considered.

At common law.

At the common law, estates of freehold, either corporeal or incorporeal, could not be voluntarily partitioned by joint tenants without a deed: Litt. s. 290; Co. Litt. 169 a, 187 a. Tenants in common, however, might have made a partition by parol without deed, if, as to corporeal estates, they afterwards perfected the partition in severalty by livery of seisin: Co. Litt. 169 a; and coparceners, whether of lands lying in livery or in grant, and although of lands situate in different counties, might have made a partition by parol without deed: Litt. s. 250; Co. Litt. 169 a; and joint tenants for years might have

Partition by Conveyance.

made partition by parol without a deed: Dyer, 350 b, pl. 20; Co. Litt. 187 a.

Statute of Frauds.

By the Statute of Frauds, a *writing* became necessary to effect a partition of lands among tenants in common or coparceners, a deed continuing to be necessary as to joint tenants, because it was so at common law. And now by the stat. 8 & 9 Vict. c. 106, s. 3, a partition of any tenements or hereditaments, not being copyhold, is rendered void unless made by deed (*a*).

Stat. 8 & 9 Vict. c. 106.

Proper words of conveyance to effect partition.

(*a*) The proper mode of conveyance from one joint tenant to another, and the most effectual to sever the joint tenancy, either of the whole or part of the immediate freehold of lands, is said to be a release: *Chester* v. *Willan*, 2 Saund. 97, livery or what is equivalent to it, not being necessary, because each has a seisin in every part and the whole, *per mie* (a contraction for *moitié*, the half) *et per tout:* Litt. s. 288; Hawk. Abr. Co. Litt. 271, 7th ed.

Conveyance between co-parceners and heirs in gavelkind.

Coparceners, including heirs in gavelkind, have, as well as joint tenants, privity of estate and possession: Co. Litt. 163 b; 169 a; 175 b; 2 English Copyholder, 425; and are seised *per mie et per tout*, Bro. Abr. *Distresse*, pl. 37: it therefore seems the proper conveyance between them is a release. However, coparceners might always convey to each other, either by release or feoffment: Gilb. Ten. 73; Perk. s. 193; Harg. n. Co. Litt. 169 a (2).

Conveyance between tenants in common.

But as tenants in common have only between them a privity in possession, and not in estate, Co. Litt. 169 a, they cannot properly release to each other the immediate freehold of lands, without previously creating an estate capable of enlargement by release, as by a bargain and sale for years; because a release by way of *mitter le estate* supposes the releasee to have some estate in the whole of the lands released to him; but tenants in common, in supposition of law, have several distinct undivided freeholds in every part of the lands, and one of them cannot transfer any part to the other without livery of seisin, or what is equivalent to it: Co. Litt. 200 b; 3 Bac. Abr. 694, *Joint Tenants*, &c., (1) 3, (2); Gilb. Ten. 73, 74; Hawk. Abr. Co. Litt. 365.

Partition of things in grant.

Partition may be made of things lying in grant, as of a reversion, that one shall have the reversion of other acres: Co. Litt. 169 a; 16 Vin. Abr. 217. *Et vide* Fearne's Posthumous Works, 243, as to severing a joint tenancy of a vested remainder.

Conveyance on partition of things in grant.

As livery of seisin could not be had of things lying in *grant* at common law, the proper conveyance of *incorporeal* hereditaments, namely, advowsons, tithes, commons, ways, offices, dignities, franchises, and rents, and of the reversions and remainders of lands from one joint tenant to another, is a release; from one tenant in common to another, a grant; from one co-parcener, or heir in gavelkind, to another, either a release or grant. The existence of these incorporeal hereditaments is merely in idea and abstracted

Partition by Conveyance.

As to partition of a manor.

If a manor descend to coparceners and a partition be made, and the *entire demesnes* are allotted to one, and the services to another, the manor is then *suspended*, for neither of them has any other than a nominal manor; but if one of them die without issue, and the demesnes descend to her who has the services, or *vice versâ*, the manor is revived again; because on the partition they were *in* by act of law, and the manor was only suspended, and was not extinct, and the demesnes and services were united again by act of law: *Earl of Gloucester's Case*, Bro. Abr. *Extinguishment*, pl. 13; 6 Co. 64 a; 2 Roll. Abr. 122 (F.) pl. 3 (H.); 15 Vin. Abr. 222, 224. So it is said if a partition be made of a manor between two coparceners, and on the partition each has part of the demesnes and part of the services, because each of them is in by act of law, each of them has a manor, not in name only, but in reality and in name: *Finch's Case*, 6 Co. 64 a; Co. Cop. s. 31, Tr. 52, 53; 2 Roll. Abr. 122 (G.); because, unlike joint tenants, they were compellable to make partition by common law, being in by descent: *Marshe* v. *Smith*, 1 Leon. 27. So, if a man has a manor, and he grant part of the demesnes and part of the services to another, the grantee shall not have a manor, because a man by his own act cannot create a manor at this day: and thus it appears that *fortior et potentior est dispositio legis quam hominis: Finch's Case*, 6 Co. 64; Gilb. Ten. 210; *Morris* v.

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contemplation: though their effects and profits may be frequently objects of our senses: 2 Bl. Com. 20, *et vide* Co. Litt. 9, a.: and a remainder or a reversion of lands, being only a present right to a future enjoyment of the possession, has in the same manner no existence but *in jure et intellectu*.

By the stat. 8 & 9 Vict. c. 106, s. 2, all corporeal tenements and hereditaments as regards the conveyance of the immediate freehold thereof lie in grant as well as in livery.

Of late years the use of the word "grant" seems to have in practice superseded that of "release." The use of the proper words of conveyance to effect a partition is, however, now of little practical importance, for by the Conveyancing and Law of Property Act, 1881, the term "convey" includes for the purposes of the Act any assurance, or any dealing with any property: see sect. 2 (v) of that Act. As to the operation and effect of a "conveyance" under that Act, see sect. 6.

Partition by Conveyance.

Smith, Cro. Eliz. 38. However, the doctrine that coparceners after partition shall have several manors is rather doubtful, because it was held in *The Queen* v. *The Duchess of Bolton* (6 Mod. 151), that a manor is an entire thing, and not severable: and common sense seems to oppose the doctrine, because there might by possibility be ten coparceners, in which case, if the doctrine were followed, there might be ten manors made from one manor. After a partition of the demesnes and services, either by joint tenants, tenants in common, or coparceners, it seems that they may hold *one* joint Court Baron.

Advowsons.

As to the usual mode of effecting partitions of advowsons, see *post*, p. 141.

Issue in tail found.

A partition of lands entailed between coparceners, if it be equal at the time of the partition, will bind the issue in tail; Co. Litt. 173 b.

Partition where coparcener is *feme coverte*.

The *husband* of a coparcener in fee simple may make an *equal* partition of the estate in coparcenery in yearly value; but the wife must be a party to the partition, otherwise it will not bind her nor her heirs: Bro. Abr. *Partição*, pl. 1 and 28. If the partition be unequal, it will bind the husband, but it will be *voidable* by the wife or her heirs, after the husband's death, and consequently may be *confirmed* by the wife or her heirs after his death, by leasing or taking possession of the unequal part, receiving the rents, or doing any other act amounting to a confirmation of an estate which is not *void*, but voidable: Co. Litt. 170 b, 171 a; *et vide* 4 Bac. Abr. 13, Gwill. ed. *Leases* (C.); 7 Ibid. 64, *Void and Voidable;* Serjt. Williams's note, 2 Saund. 180 (9); 1 Roper, Husband and Wife, 93; Com. Dig. *Confirmation*, (A) (D 1); *Baron and Feme* (S 1). And a coparcener and her husband may grant a rent in fee for equality of partition out of her part, if the partition be equal: Co. Litt. 169 b. And the reason of this anomaly contrary to the general principles of the law, that a husband cannot do any act to affect the inheritance of his wife, Lord *Coke* says, is, that husbands and wives are compellable by [the common] law to make partition: and that which they are compellable to do in this

Husband or wife may grant rent for equality of partition.

Partition by Conveyance.

case by law they may do by agreement without process of law; but it is contrary of joint tenants, for they are in by purchase, and were not compellable by the common law to make partition; and, therefore, upon partition between them, a rent cannot be *reserved* for equality of partition: *Marshe* v. *Smith*, 1 Leon. 27.

Separate use under the old law.

Where a married woman (whose case falls under the old law) is entitled to land settled to her separate use, she has, unless restrained from anticipation, and without any express power, a complete right of alienation of her estate: *Taylor* v. *Meads*, 4 De G., J. & Sm. 597. Formerly, to pass the legal estate, however, the concurrence of the husband would have been necessary to a partition (as to any other conveyance), and the deed must have been acknowledged. Whether such concurrence and acknowledgment are now necessary in such a case has not yet been judicially determined; but it is submitted that the effect of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), is to do away with such necessity: see *ante*, tit. ACKNOWLEDGMENTS, Vol. I. pp. 230 *et seq.*, where this question is fully discussed, and grounds stated for the view here expressed.

Married Women's Property Act, 1882.

In the case of a woman entitled to an undivided share of land, who was married on or after the 1st of January, 1883, or whose title accrued on or after that date (*b*), she may dispose of her share as

(*b*) The meaning of the term "title accrued after commencement of the Act," was considered *ante*, tit. LEASES, Vol. III., at p. 69, note (*c*). Since those remarks were made, the case of *Reid* v. *Reid*, 31 Ch. D. 402, has been decided, in which it was held by the Court of Appeal that if a title to any property, vested or contingent, in reversion or remainder has been first acquired before the commencement of the Act by a woman married before that date, her title will have accrued before and not after the commencement of the Act, though it falls into possession after that date, and consequently the property does not become her separate estate by virtue of the Act. The decisions in *Baynton* v. *Collins*, 27 Ch. D. 604, and *Re Thompson and Curzon*, 29 Ch. D. 177, are therefore overruled; and a question of much importance, and which had given rise to much conflict of judicial opinion, may be regarded as settled.

Partition by Conveyance.

her separate property in the same manner as if she were a *feme sole;* and she may therefore join in effecting a partition of the land without her husband's concurrence, and without any necessity for the deed to be acknowledged.

Equal partition binds infant coparcener.

So an equal partition will bind an infant coparcener, because a writ of partition lies in such case at common law : Co. Litt. 171 a ; but an unequal partition is *voidable,* either during infancy, or afterwards ; yet it may be confirmed : Litt. s. 258. A *prochein amy,* or a guardian of an infant, can only make an equal partition to continue during the infancy : Bro. Abr. *Partiçion,* pl. 1 ; *sed vide* some loose cases, *contra,* 2 Roll. Abr. 256 (E), pl. 1, 3 and 4 ; 16 Vin. Abr. 222 (E).

On partition by coparceners, tenants in tail, &c., nothing further should be done.

But in all these cases of partition, by deed taking effect under the principles of the common law, by tenants in tail, husband and wife in right of a wife seised in fee, and infants, who are *coparceners,* nothing more than a partition should be made ; the course of descent should not be altered ; the estate should not be conveyed to uses ; a married woman or an infant should not thereby attempt to gain a power over the lands, to be executed during their disabilities, by a mere deed or writing.

Partition by deed, by infant, &c., joint tenants and tenants in common, governed by common law rules.

Partitions by deed, by tenants in tail, *femes covertes* not being entitled to their separate use, and infants, who are joint tenants, or tenants in common, are governed by the same rules as conveyances, or other acts done by them. Consequently, to effect a partition by deed of the estate of a married woman (not being separate estate), or a tenant in tail who is a joint tenant or tenant in common, the deed must be acknowledged or inrolled to make it binding on the woman and her heirs, or on the heirs in tail.

No implied warranty of title.

By sect. 4 of the stat. 8 & 9 Vict. c. 106, it is enacted that a partition of any tenements or hereditaments made by deed after the 1st of October, 1845, shall not imply any condition in law (*c*).

(*c*) As to the warranty of title formerly implied on partition by deed, see Co. Litt. 174 a, 384, a ; Litt. s. 262 ; *Bustard's Case,* 4 Rep. 121 b ; and stats. 3 & 4 Will. 4, c. 27, s. 39 ; 3 & 4 Will. 4, c. 74, s. 14.

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Agreement for partition.

A parol agreement for a partition, put in execution, and acquiesced in for a long time, will be enforced by a Court of equity, if the persons who made the agreement had a right to contract; but an agreement for a partition, by the husband of a joint tenant, and consequently of a tenant in common in fee, will not bind the inheritance of his wife: *Ireland* v. *Rittle*, 1 Atk. 542; nor by the husband of a coparcener, unless she be a party to it: Co. Litt. 169 b.

Wives of joint tenants not dowable.

The wives of joint tenants are not dowable, because their husband have not a sole seisin: Litt. s. 45; Co. Litt. 37 b; Hargr. n. Co. Litt. 35 a (1); Gilb. Uses, 404; 1 Roll. Abr. 676 (G), pl. 4. For the same reason, if a husband joint tenant make a feoffment or other conveyance of his part to a stranger, his wife will not be dowable of it: F. N. B. 150 K; Co. Litt. 31 b, *et* n. (4). Yet if the husband, on a partition, acquire a sole seisin of the *legal* estate of freehold and inheritance in his part, his wife will become dowable of it: to avoid which, the allotment should be limited to uses to prevent dower. But if the husband's estate in severalty was only an *equitable* or trust estate, as, under an agreement for a partition, the wife was not dowable, a modern trust being the same as a use at common law, of which it appears, from the recital in the Statute of Uses: 27 Hen. 8, c. 10; and the old books, that a widow was not dowable: Perk. s. 349: Dyer, 226 a, pl. 6; 4 Rep. 1 b; 3 P. Wms. 234; 1 Eden, 196. Yet a husband is allowed curtesy of a trust, contrary to the common law: Perk. s. 457; and this, though the property be limited to the wife's separate use during the coverture: *Morgan* v. *Morgan*, 5 Madd. 408. Now, by stat. 3 & 4 Will. 4, c. 105, a widow, who was married after the 1st of January, 1834, is dowable of all estates of inheritance in possession, not being joint estates, to which the husband was beneficially entitled in equity, or partly in equity and partly at law.

Curtesy of a trust.

Wives of tenants in common, coparceners.

The wives of tenants in common (Litt. s. 45), coparceners (2 Cru. Dig. 520), and heirs in gavelkind (Co. Litt. 33 b, 111 a; Robinson's Gavelkind,

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and heirs in gavelkind, are dowable.

159, 2nd ed.), are dowable of the shares of their husbands. On a fair and equal partition made by the husband of a tenant in common, coparcener, or heir in gavelkind, his wife would only be dowable of the part received on partition; yet an unequal partition would be voidable *quoad* her dower. To prevent this question, it is advisable that the wife (if married before the 1st of January, 1834) should be a party to and acknowledge the partition deed so as to release her dower. But as regards persons married since that date, no widow is entitled to dower out of any land absolutely disposed of by her husband: stat. 3 & 4 Will. 4, c. 105, s. 4.

Effect of partition on easements.

The general rule, according to the principles alike of English and of the civil law, appears to be that all easements, whether of necessity or convenience, are extinguished by unity of possession: Gale on Easements, 146; see *Morris* v. *Edgington*, 3 Taunt. 24; *James* v. *Dods*, 2 C. & M. 266. An easement once extinguished by unity will not revive on a subsequent severance (*d*). But easements which before the unity were easements of necessity will, on severance, be deemed, by implication of law, and without any express words of conveyance, to be granted anew. In *Holmes* v. *Goring* (2 Bing. 76), *Best*, C. J., said, "If I have four fields, and grant away two of them, over which I have been accustomed to pass, the law will presume that I have a right of way to those which I retain: but what right? the same as existed before? No: the old right is extinguished, and a new way arises out of the necessity of the thing. A way of necessity, when the nature of it is considered, will be found to be nothing else, but a way by grant; but a grant of no more than the circumstances which raise the

(*d*) In order that easements should be extinguished by unity of possession, it is necessary that the owner of the two tenements should have an estate in both in fee simple of an equally high and durable nature: Co. Litt. 313 a, 313 b; see *Rex* v. *Inhabitants of Hermitage Castle*, 239; *Conham* v. *Fiske*, 2 Cr. & G. 126; *Thomas* v. *Thomas*, 2 Cr. M. & R. 34. In *James* v. *Plant*, 4 A. & E. 766, it was held that the mere momentary seisin of a releasee to uses was not sufficient to effect a merger by unity of possession.

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implication of necessity require should pass. By the grant a new way is created, and that way is limited by the necessity." Rights of way and other easements not being of necessity extinguished by unity will not pass upon a subsequent severance, unless the grantor uses language showing that he intends to create the easement *de novo: Barlow* v. *Rhodes*, 1 C. & M. 448; see also *Worthington* v. *Gimson*, 2 E. & E. 618; *Pearson* v. *Spence*, 1 B. & S. 571; *S. C.*, in error, 3 B. & C. 761.

Powers in settlement of undivided shares.

Formerly every well drawn settlement, whether by will or deed, of undivided shares of freehold, leasehold, or copyhold lands, contained, as well as the usual powers of sale and exchange, a power to make a partition; and the power should enable the trustees to raise any money which may be payable for equality of partition, by sale or mortgage of the property; and if money should be received by way of equality, the power should authorize the trustees to lay it out in the purchase of lands, &c., to be settled to the same uses.

The insertion of such express powers in instruments creating settlements has now become in great measure obsolete, by reason of the statutory powers of effecting partitions conferred on limited owners, and on trustees, &c., where such owners are under disability, by the Settled Land Act, 1882, as to which see *infra*, p. 133.

As cases may still arise where it is desired to effect a voluntary partition under such powers, their operation and effect will be here briefly considered.

Power of sale not executed by partition.

A power of sale is not well executed by a mere partition: *M'Queen* v. *Farquhar*, 11 Ves. 467; *Att.-Gen.* v. *Hamilton*, 1 Madd. 214.

Whether a power of exchange will authorize a partition.

The question whether a power of exchange in the usual form authorizes a partition has been much disputed.

Where the power was to make sale of, or convey in exchange, the undivided third part of the lands for the best price, &c., in money or *such other equivalent interest* in manors, lands, and hereditaments, as should to the trustees seem proper, it was determined that the power authorized a partition: *Abel* v. *Heath-*

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cote, 4 B. C. C. 278; *S. C.*, 2 Ves. jun. 98; Mr. *Fearne* thought the power authorized a partition, on the ground that the partition was in *effect* an exchange. In *M'Queen* v. *Farquhar*, 11 Ves. Jun. 473, Lord *Eldon* doubted whether a power to exchange is well executed by a partition. See also *Att.-Gen.* v. *Hamilton*, 1 Madd. 214; *Doe* v. *Spencer*, 2 Ex. 752; *Brassey* v. *Chalmers*, 16 Beav. 223; Chance on Powers, 147; Sugd. on Powers, 856.

Mr. *Preston*, in his note in Shep. Touch. 292 (where in the text it is laid down that a power to make an exchange does not warrant a partition), asks the question, what objection is there to the exchange of an undivided moiety? and he says he cannot find any objection.

In the last edition of this work (see Vol. VI., p. 594) Mr. *Jarman* expressed his opinion that whenever the point should call for decision it must be determined that a power of exchange cannot be executed by a partition. In *Bradshaw* v. *Fane* (3 Drew. 534; see *S. C.*, more fully reported in 2 Jur., N. S. 247) *Kindersley*, V.-C., after an elaborate examination of the authorities, stated his opinion really to be in favour of holding that the ordinary power of exchange authorizes a partition, but he considered this abstract proposition so doubtful on the authorities, that he would not force the title on an unwilling purchaser. In *Re Frith and Osborne*, 3 Ch. D. at p. 628, *Jessel*, M.R., said that the passage in Touchstone is not good law, but that a power to exchange will authorize the exchange of an undivided moiety of Whiteacre for another undivided moiety of Blackacre. The decision of this general principle was not, however, necessary to enable his lordship to determine the point at issue in that case, as the power was expressed in somewhat special terms. The point may therefore, perhaps, be regarded as not absolutely settled, but, on the whole, it seems that the balance of authority is (consistently, as it is submitted, with reason and common sense) in favour of upholding a partition as a valid execution of a power of exchange in the ordinary form.

Lord *Rosslyn*, in *Abel* v. *Heathcote* (2 Ves. jun. at

p. 101 ; 4 B. C. C. at p. 285), says, "If any person had been ingenious enough to think of this objection at the time of the partition, by making the trustees sell, receive the money, and buy a third of the same estate, the whole would have been within the words of the power. They revoke the uses in order to acquire a divided third of the estate, which they have taken in lieu of the undivided part. They might have taken money, rent, or land, anywhere else." Although this fictitious proceeding would be against the rule, that no act can be done by circuity which cannot be done directly, yet it does not seem that the transaction could be impeached. **Partition by Conveyance.**

By the Settled Land Act, 1882 (45 & 46 Vict. c. 38), sect. 19, a tenant for life or other limited owner (see sect. 58) is empowered to join or concur in any manner necessary for the purposes of the Act with the owner of any undivided share. And by sect. 3 of the same Act it is enacted that the tenant for life, or other such limited owner,— Power to partition under Settled Land Act, 1882.

(iv.) "Where the settlement comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares,—may concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition."

And the Act confers on tenants for life the following ancillary powers for the purpose of effecting a partition under this section. Ancillary powers.

By sect. 31, sub-sect. 1, a tenant for life may contract to make any partition, and may vary or rescind the contract ; and the contract will bind, and ensure for the benefit of his successors in title. Contract.

By sect. 5, where, on a partition, there is an incumbrance affecting land given in partition, the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, whether already charged therewith or not, in exoneration of the part so given. Transfer of incumbrances.

And by sect. 24, sub-sect. 4, land acquired by partition may be made a substituted security for any charge in respect of money actually raised and remaining unpaid, from which any undivided share in Substitution of securities.

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the settled land has theretofore been released, on the occasion and in order to the completion of a partition.

Consideration.

Every partition must be made for the best consideration in land, or in land and money, that can reasonably be obtained, and may be made subject to any stipulations respecting title, or evidence of title, and other things: sect. 4, sub-sects. 2—5.

A tenant for life in effecting a partition may deal separately with the surface and minerals.

Separate dealing with surface and minerals, with or without way-leaves, &c.

Sect. 17.—(1.) "A sale, exchange, partition, or mining lease, may be made either of land, with or without an exception or reservation of all or any of the mines and minerals therein, or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, wayleaves or rights of way, rights of water and drainage, and other powers, easements, rights, and privileges for or incident to or connected with mining purposes, in relation to the settled land, or any part thereof, or any other land.

(2.) "An exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals."

Mortgage for equality money.

And by sect. 18, where money is required for equality of partition, the tenant for life may raise the same on mortgage of the settled land, or of any part thereof. The money raised is to be capital money arising under the Act, and consequently must be paid at the option of the tenant for life, either into Court, or to the trustees who are empowered to receive the same: sect. 22; but it must not be paid to less than two trustees unless the instrument creating the trust authorize the receipt of capital trust money by one trustee: sect. 39. The receipt of the trustees is a valid discharge to the person paying the money, and absolves him from seeing that the money is actually required for the professed purpose: sect. 40; or that the requirements of the Act are complied with: sect. 54.

Conveyance of lands given on partition.

By sect. 20, sub-sect. 1, on a partition the tenant for life may convey the lands given to the uses and in manner requisite for giving effect to the partition, and by sect. 55, sub-sect. 2, he may execute, make

and do all deeds, instruments, and things necessary or proper in that behalf. Partition by Conveyance.

By sect. 24 it is enacted as follows:—

Sect. 24.—(1.) "Land acquired by purchase or in exchange, or on partition, shall be made subject to the settlement in manner directed in this section. Settlement of land purchased, taken in exchange, &c.

(2.) "Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which, under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging.

(3.) "Copyhold, customary, or leasehold land shall be conveyed to and vested in the trustees of the settlement on trusts and subject to powers and provisions corresponding, as nearly as the law and circumstances permit, with the uses, trusts, powers, and provisions to, on, and subject to which freehold land is to be conveyed as aforesaid; so nevertheless that the beneficial interest in land held by lease for years shall not vest absolutely in a person who is by the settlement made by purchase tenant in tail, or in tail male, or in tail female, and who dies under the age of twenty-one years, but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go."

A tenant for life when intending to make a partition must give to the trustees and their solicitor one month's previous notice, as prescribed by sect. 45 of this Act, but a person acting in good faith is not concerned to inquire as to the giving of such notice; and by sect. 5 of the Settled Land Act, 1884 (47 & 48 Vict. c. 18), the notice of intention to make a partition may be notice of a general intention on that behalf, but a tenant for life is upon request by a trustee of the settlement to furnish him particulars and information with regard to partitions, effected or in progress, or immediately intended. Notice.

If the tenant for life is an infant, the power may be exercised on his or her behalf by the trustees of the settlement, or under an order of the Court: sect. 60; and an infant absolutely entitled is to be deemed a tenant for life of the settled land for the purposes of the Act: sect. 59. Persons under disability. Infants.

Married women may exercise the power either Married women.

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solely or jointly with their husbands, according as they are entitled to their separate use, or otherwise: sect. 61. A deed of partition executed under the statutory power (like any other deed whereby a power is exercised by a married woman) will in no case require acknowledgment: see Sugd. Powers, 153.

Lunatics.

Where a tenant for life is a lunatic, his committee may in his name and on his behalf, under an order in lunacy, exercise the power: sect. 62.

Express powers exerciseable with consent of tenant for life.

Where a settlement contains an express power to effect a partition, such power is still exerciseable, but only with the consent of the tenant for life: sect. 56.

Modes of effecting partition.

A partition of estates of freeholds of inheritance, whether in possession, or in remainder or reversion, may be effected by either of the two following methods: The first method is for all the joint-tenants, tenants in common, coparceners, or heirs in gavelkind, to convey, the particular part allotted to each by a separate deed to a grantee, to the use of the particular allottee, or, if the shares are settled, to the subsisting cases of the settlement; the grantee is a mere conduit-pipe, and there is no need of his joining in any future conveyances; the uses are fed by his seisin, and are executed immediately into legal estates by the statute of uses; or, in more simple terms, the possession of the grantee is drawn to and drowned in the uses by virtue of the statute.

The other method which is now generally employed in practice is, for all of them to convey the entirety to a grantee, and to limit the several particular parts allotted to each, to his use or the uses of a settlement, as the case may require. In this case, the conveyance must necessarily be rather long, and there should be as many parts of the deed as there are partitioners. If the partition is thus effected by a single deed, counterparts should be executed by all the parties, to be retained by each of them, other than the person who retains the original deed; or, at least, each should have an attested or other copy of the deed, and they should take a covenant for or statutory acknowledgment of right to production of the original by the person who keeps it.

Partition by Conveyance.

Copyholds.

In the case of a partition of copyholds, each co-owner covenants to surrender to the other his undivided share in that part of the lands which is allotted to the other in severalty, and the entirety is accordingly surrendered, and the parties admitted to hold the parts allotted to them respectively in severalty.

Leaseholds.

As leaseholds are not capable of being limited to uses, a partition must be effected either by an assignment of the whole to a trustee upon trust to assign to the several parties their respective allotments, or by mutual assignments by the different parties of their undivided shares to each other: see *post*, p. 159, note (*g*).

Form of partition deed.

To the completeness of a partition deed, it is, in general, requisite that there should be—1st. An accurate statement of the title of the several partitioners, and a conveyance adapted to their respective interests. 2ndly. A clear and correct delineation of the several portions to be taken in severalty by the parties, which is commonly best effected by a plan. 3rdly. Limitations of these respective portions according to the intentions of the parties. 4thly. Covenants for title (*e*). The following precedents exemplify these particulars. They are confined, however, to the circumstances of most frequent occurrence. Special deeds of this kind are, in general, of such extreme length and complexity, that a very few of them would have swelled the present volume beyond its allowed bulk, and would be of very limited utility.

Custody of title deeds.

Each of the parties to a partition, whatever may be the means whereby it is effected, is, of course, entitled to delivery of the deeds and documents of title relating only to lands allotted to him in severalty: *Jones* v. *Robinson*, 3 De G. M. & G. 910. As regards deeds and documents relating to the entire property the general practice of the Court in

(*e*) Express covenants for title are now generally omitted, the parties being respectively made to convey "as beneficial owners," whereby the statutory covenants for title set out in sect. 7 of the Conveyancing and Law of Property Act, 1881, are implied.

Partition by Conveyance.

the case of partitions effected under its order (as to which see *infra*), is to give the custody to the person having the greatest interest in the estate, or if all the parties are equally interested to give the custody to the plaintiff, reserving liberty to apply with regard to the deeds and documents, and the plaintiff or other party retaining them undertaking to abide by any order which the Court may make with regard to them: see *Lord Cardigan's Case,* cit. Seton, 1030; *Jones* v. *Robinson,* supra; see also *Elton* v. *Elton,* 27 Beav. 632, where there being many persons interested it was ordered that the deed of partition be enrolled, and that any party should be at liberty to have a counterpart at his own expense. In voluntary partitions the usual course is that the custody of the title deeds of the estate should be given to the person having the greatest interest; or, if all the parties are equally interested, it is arranged that one of the parties shall hold them. In either case the person retaining the deeds should enter into a covenant to produce them or give a statutory acknowledgment of the right of the other persons interested to their production and delivery of copies thereof, and an undertaking for their safe custody.

Actions for partition.

Partition by Action in the High Court of Justice.]—In case of the refusal or incapacity of one of several joint owners to concur in effecting a partition, unless the incapacity falls within the statutory provisions above referred to, the partition can be effected only by means of an action in the High Court of Justice (*f*). See *Agar* v. *Fairfax,* 17 Ves. 533; and

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Origin of equitable jurisdiction.

(*f*) The jurisdiction in these cases did not originate under the authority of any Act of Parliament: *Agar* v. *Fairfax,* 17 Ves. 552; but appears to have arisen in consequence of the Act of the 32 Hen. 8, which made one tenant in common accountable to the other; so that since the statute, they are become, in a manner, trustees the one to the other. So said in argument, 1 Vern. 421.

Mr. Hargrave, in a note to Co. Litt. 169 a, (2), after having stated with his usual clearness and elegant precision the different modes of partition in our own law, and made reference to works on the subject in the English, Civil and Scotch laws, with which the English lawyer would do well to be acquainted, says, "How far this branch of equitable jurisdiction, so trenching upon the

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the notes on that case in 2 Wh. & Tud. L. C. 419 *et seq.*

Writ of partition abolished.

The proceeding by writ of partition at Common Law had long been practically obsolete when it was abolished by the stat. 3 & 4 Will. 4, c. 27, s. 36. An action for partition must now be brought in the Chancery Division of the High Court (*g*).

An action for partition, it is said, is not an application to the equity of the Court, but the relief sought is demandable as matter of right: *Parker* v. *Gerard*, Amb. 236; *Baring* v. *Nash*, 1 V. & B. 554; *et vide* Suppl. Vin. Ab. 5, 338; but this does not prevent the Court from imposing terms upon the

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writ of partition, and wresting from a court of common law its ancient exclusive jurisdiction over this subject, might be traced by examining the records of Chancery, I know not. But the earliest instance of a bill of partition I observe to be noticed in the printed books, in a case of the 40 Eliz. in Tothill's Transactions in Chancery, title *Partition* (155, ed. 1820). According to the short report of this case, the court interposed from necessity, in respect of the minority of one of the parties, the book expressing, that on that account he could not be made party to a writ of partition; which reason seems very inaccurate, for, if Lord Coke is right, that writ doth lie against an infant, and he shall have his age in it, and after judgment he is bound by the partition. Co. Litt. 171 b. But probably, in Lord Coke's time this was a rare and rather unsettled mode of compelling partition; for I observe in a case in Chancery of the 6 Car. 1, which was referred to the judges, on a point of law between two coparceners, that the judges certified for issuing a *writ of partition* between them, and that the court ordered one accordingly, which I presume would scarce have been done, if the decree for partition, and a commission to make it, had then been a current and familiar proceeding with Chancery. 1 Cha. Rep. 49. However, it appears by the language of the court in a very important cause, in which the grand question was, whether the Lord Chancellor here could hold plea of a trust of lands in Ireland, that in the reign of James the Second bills of partition were become common. 1 Vern. 421; 2 Cha. Cas. 189." In the reign of William and Mary, the Chancellor observed, "he did no more question the jurisdiction of the Chancellor in these cases, than he did whether a gift to a man and his heirs were a fee simple:" *Manaton* v. *Squire*, 2 Freem. 26.

Judicature Act, 1873.

(*g*) The "partition of real estates" is among the purposes, all causes and matters relating to which are assigned to the Chancery Division: see sect. 34 (3) of the Judicature Act, 1873 (36 & 37 Vict. c. 66).

County Courts.

The County Courts have jurisdiction in all actions for partition where property to which the action relates does not exceed in value 500*l.*: see stat. 31 & 32 Vict. c. 40, s. 12.

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party claiming the interference of the Court. Thus, in the case of *Swan* v. *Swan,* 8 Price, 518, the Court compelled the plaintiff in a partition suit to allow for improvements made by the defendant, who had been in the occupation of the premises. And the maxim referred to is now subject to the power of the Court under the Partition Acts in certain cases to direct a sale instead of partition; as to which see *post,* p. 149.

Title.

The plaintiff must show his own title to a share, and the titles of the defendants; and the better to enable the plaintiff to obtain a judgment for partition, the Court may direct inquiries to ascertain who are with him entitled to the property: *Calmady* v. *Calmady,* 2 Ves. Jun. 570; *Agar* v. *Fairfax,* 17 Ves. 552; *Jope* v. *Morshead,* 6 Beav. 213. But the Court has no jurisdiction to try a disputed question of title in an action for partition: *Slade* v. *Barlow,* L. R. 7 Eq. 296; see *Bolton* v. *Bolton,* ibid, 298 n.; *Giffard* v. *Williams,* L. R. 5 Ch. 546.

There can be no partition by way of foreclosure at the suit of a person entitled to part of the money due on a mortgage: *Palmer* v. *Earl of Carlisle,* 1 S. & St. 423. See *Remer* v. *Stokes,* 4 W. R. 730. And an order for partition is not properly incident to an action for foreclosure or redemption, in such a way that the owners of an equity of redemption can be allowed to insist on it against the will of the mortgagee who has no interest in the question: *Watkins* v. *Williams,* 3 Mac. & G. 622. But a mortgagee of an undivided share may bring an action for foreclosure and partition, and may move for a receiver of the undivided share comprised in his mortgage: *Fall* v. *Elkins,* 9 W. R. 861.

Difficulties in the way of partition.

Partition will not be refused on the ground of difficulties, or circumstances arising out of the complex state of the title, or the minuteness of the shares or interests of the parties: *Calmady* v. *Calmady,* 2 Ves. Jun. 558; *Agar* v. *Fairfax,* 17 Ves. 533.

Where in a suit for partition the defendants are all desirous that there shall be no partition of their several shares, the partition may be confined to the

aliquot share of the plaintiff: *Hobson* v. *Sherwood*, 4 Beav. 184. **Partition by Action.**

On a partition every part of the estate need not be divided. If there be three houses, it would not be right to divide each house, for that would be to spoil them; but some recompense is to be made, either by a sum of money, or rent, for equality of partition, to those who have the houses of the least value: *Earl of Clarendon* v. *Hornby*, 1 P. Wms. 446; 3 Cru. Dig. 539, 2nd ed.; *Story* v. *Johnson*, 1 Y. & C. 438; 2 Id. 586. But, if there be but *one* house, and no other lands, there may be a decree for the *partition* of it, though it would be highly inconvenient to the parties: *Turner* v. *Morgan*, 8 Ves. 145; and see *Watson* v. *Duke of Northumberland*, 11 Ves. 157; 1 P. Wms. 447; *Story* v. *Johnson*, 2 Y. & C. 610; see also *Warner* v. *Baynes*, Ambl. 589; *S. C.*, alluded to in *Parker* v. *Gerard*, Ambl. 236. So if there be but one *mill* to be divided, a partition may be effected by giving to each of the parties every other toll-dish. But it is different where there are other lands, which may make up the share: *Turner* v. *Morgan*, 11 Ves. 143; and see *Earl of Clarendon* v. *Hornby*, 1 P. Wms. 447. Every part of the estate need not be divided.

In the case of an advowson it has been held that the right to nominate, if the co-owners cannot agree among themselves as to its exercise, must be determined by lot in the case of tenants in common, and by seniority in the case of coparceners: *Johnstone* v. *Barber*, 6 De G. M. & G. 439; see also as to partition of advowsons: *Bodicote* v. *Steers*, 1 Dick. 69; *Matthews* v. *Bishop of Bath and Wells*, 2 Dick. 652. The usual mode of effecting a voluntary partition of an advowson is to limit it to the parties as tenants in common, with a proviso that they shall exercise the right of presentation in turn: see *Bishop of Salisbury* v. *Phillips*, Carth. 505. The Court can now, instead of ordering a partition of an advowson, direct it to be sold under the Partition Acts, and the proceeds of sale to be distributed among the parties in proportion to their interests: *Young* v. *Young*, L. R. 17 Eq. 175 n. Partition of an advowson.

A partition was decreed between tenants in com- Partition of a waste.

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mon of a *waste*, though great inconvenience might ensue, as the want of pasture, shade, &c. : *Manton* v. *Squire*, 2 Ch. Cas. 237.

Manor.

A partition of a manor has also been decreed : *Sparrow* v. *Fiend*, Dick. 348; *Hanbury* v. *Hussey*, 14 Beav. 152 ; *Ley* v. *Cox*, Ibid. 157 ; *Cottley* v. *Arnold*, 4 K. & J. 595.

As to partition where the shares are very minute, see *Shepherd* v. *Churchill*, 25 Beav. 21.

Lessees.

A bill for a partition may be sustained on behalf of a joint-tenant of a lease for years ; nor in such case is the reversioner (*h*) a necessary party : *Baring* v. *Nash*, 1 Ves. & B. 551 : *Heaton* v. *Dearden*, 16 Beav. 147 ; and the rent may be apportioned : *Ames* v. *Comyns*, 16 W. R. 74. And an action for a partition of *tithes* will lie : *Baxter* v. *Knollys*, 1 Ves. sen. 495.

Copyholders.

Formerly, the Court in Equity had no jurisdiction to direct a partition of copyholds or customary freeholds. But by sect. 85 of the stat. 4 & 5 Vict. c. 35 (amended by the stat. 21 & 22 Vict. c. 94) the Court has the same power of decreeing a partition of lands of copyhold and customary tenure as it previously had with respect to lands of freehold tenure : see *Clark* v. *Clayton*, 2 Giff. 333.

Partition by tenant for life, &c.

An order for partition may be obtained at the suit of a tenant for life : *Gaskill* v. *Gaskill*, 6 Sim. 643 ; see also stat. 32 Hen. 8, c. 32 ; or, of a tenant for life whose interest is determinable on marriage : *Hobson* v. *Sherwood*, 4 Beav. 184 ; or, of a tenant by the curtesy : Co. Litt. 175 ; or, by a tenant in tail : *Brook* v. *Hartford*, 2 P. Wms. 518 ; and a parol partition between tenants in tail was held to bind the issue : *Burton* v. *Jeux*, cit. 2 Vern. 232.

The plaintiff's right to a partition is commensurate with his interest. A tenant for years or for life

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(*h*) In an Irish case the Court refused partition of a house held under a lease subject to rent and covenants, on the ground that the landlord might have an injunction to prevent the execution of any partition by any act amounting to waste, and that after partition neither party could be protected by the Court from the consequences of breaches of covenant by the other : *North* v. *Guinan*, 1 Beatt. 342 ; see also *Baring* v. *Nash*, 1 Ves. & B. 551.

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cannot insist, as against the owners of the other shares, upon a partition to endure beyond his own estate: see *Baring* v. *Nash*, 1 Ves. & B. 551; *Gaskill* v. *Gaskill*, 6 Sim. 643; but to that extent he may, without the concurrence of the reversioner or reversioners, who cannot be compelled to join him in the suit: Ibid. If, either upon the determination of the particular estate, or during its continuance, the reversioner, or the owners of the other shares, should wish to compel a partition of the inheritance, another suit must be instituted, and a fresh commission issue. By parity of reasoning, the person entitled to the inheritance in fee in a share is entitled to call for the divided part in fee; and this right will not be affected by the state of the title to the other shares, or the situation of the parties entitled, except so far as these circumstances may create difficulties and delays in obtaining the completion of the partition by mutual conveyances. Those who are competent will be absolutely bound; and infants will have a day to show cause after they come of age, and if no cause be shown, will be decreed to convey; or, they may be declared trustees of the parts allotted to other parties, within the meaning of the Trustee Act, 1850.

Who may maintain action.

An infant tenant in common, or joint-tenant, may maintain an action for partition, or such an action may be brought against him: *Tuckfield* v. *Buller*, Ambl. 197; *S. C.*, 1 Dick. 240. And by the Partition Act, 1876 (39 & 40 Vict. c. 17), sect. 6, a request for sale, or undertaking to purchase, may be made, in an action for partition, on the part of an infant by his guardian, or next friend: *Rimington* v. *Hartley*, 14 Ch. D. 630.

Infants.

The interests of *infants* have always been so far regarded by the Court in Equity, in cases of partition, as well as in other cases, that no order could formerly be made against an infant without a day being allowed him to show cause against the decree after he comes of age; he was required to show cause within six months after coming of age, why the order should not be made absolute; and if he did not appear, the order was made absolute without entering an appearance: *Wharam* v.

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Broughton, 1 Ves. 183; *Savage* v. *Carol*, 1 B. & B. 651. Where there was an order *nisi* against an infant, he might, upon coming of age, and before the decree is made absolute, put in another statement of defence, the statement of his guardian not being binding upon him: *Fountain* v. *Cain and Jeffs*, 1 P. Wms. 503; and he might examine witnesses anew; *Napier* v. *Lady Effingham*, 2 P. Wms. 401. But if an infant conceived himself aggrieved by an order, he was not under a necessity to wait till he came of age in order to seek redress, but he might apply for that purpose as soon as he thought proper: *Richmond* v. *Tayleur*, 1 P. Wms. 734; *Carew* v. *Johnston*, 2 Sch. & L. 292.

An *infant plaintiff* was always, it seems (unless under extraordinary circumstances, see *Bennet* v. *Lee*, 2 Atk. 530), as much bound, and as little privileged, as one of full age: *Lord Brook* v. *Lord Hertford*, 2 P. Wms. 519; *Gregory* v. *Molesworth*, 3 Atk. 626; *Windham* v. *Windham*, 2 Freem. 127; 1 Fonbl. Treat. of Equity, 19, 15th ed.; but the Court would take care that the infant did not make any injurious submission, and would, if necessary, when the cause was brought on, allow him to amend his statement, on paying the costs of the day: *Serle* v. *St. Eloy*, 2 P. Wms. 387. There are, indeed, cases in which an infant has been allowed to show cause, when he came of age, against a decree in his own cause, respecting *real* estate: *Lady Effingham* v. *Napier*, 2 P. Wms. 401, mentioned 3 Atk. 627; but he has been held to be bound by a decree in a cause regarding *personal estate*, wherein he was plaintiff, as much as a person of full age: since it would be most mischievous with regard to personal estate, if an infant, after being of age, should be allowed to institute new proceedings to dispute anything done during his minority, as to maintenance, education, &c.: *Gregory* v. *Molesworth*, 3 Atk. 626.

Present practice.

According to the present practice, the usual course is to declare by the decree, that upon partition, the infant will be a trustee within the Trustee Act, 1850, sect. 30, and to appoint a person to convey on behalf of the infant: *Lees* v. *Coulton*, L. R. 20 Eq. 20;

see *Stanley* v. *Wrigley*, 3 Sm. & G. 18 ; Seton, 1029 ; and see *post*, p. 148. Partition by Action.

In cases of partition the decree may be extended to compel mutual conveyances: Mitf. Plead. 143, 5th ed. ; Seton, 1021. The decree directing mutual conveyances extends to parties having no other than equitable interests, which will be bound immediately by the decree ; formerly, if the parties were incompetent, they were bound only on their becoming competent, and failing to shew cause against it. It has been doubted whether, in regard to such interests, the decree would be considered as equivalent to a transfer of the property, superseding the ordinary method of conveyance ; or whether, as an act was directed to be done by the parties, either party would have a perfect title cognizable in a Court of equity, until that direction was complied with. If, under the former practice, any of the shares happened to be subject to contingent remainders to persons not *in esse*, or not ascertained, a supplemental bill must have been filed when they came *in esse*, or were ascertained, and they would be decreed, if competent, to confirm the partition already made, unless they could shew error in the decree. See as to the present practice, *post*, p. 148. Mutual conveyances.

Where a person is of unsound mind, not so found by inquisition, an action may, since the Partition Act, 1876, be maintained by a next friend on his behalf for dealing with his real estate: *Watts* v. *Leach*, 26 Ch. D. 475. Where, before that Act, a bill was filed on behalf of a person of unsound mind by his next friend for a partition or sale of real estate, and a sale was decreed, and subsequently a petition was presented under the Trustee Act, 1852, for an order vesting the plaintiff's estate in the purchaser, the Lords Justices refused to make the order, but under the special circumstances of the case their lordships directed an application to be made in lunacy under the Lunacy Regulation Act, 1862 (25 & 26 Vict. c. 86), for a sale, and allowed the petition to be amended accordingly: *Halfhide* v. *Robinson*, L. R. 9 Ch. 373. Lunatics.

A married woman may, under sect. 6 of the Par- Married women.

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tition Act, 1876, by her next friend request a sale in a partition action, or give an undertaking to purchase: see Seton, 1015.

Reversioners.

A tenant in common in reversion or remainder cannot compel a partition, and if he has no title when he commences his action, he cannot carry it on by subsequently acquiring a title in possession and amending his writ and pleadings accordingly: *Evans* v. *Bagshaw*, L. R. 5 Ch. 340; see *Biggs* v. *Peacock*, 20 Ch. D. 200.

As to how far trustees will sufficiently represent their *cestuis que trust* in an action for partition, see *Stace* v. *Gage*, 8 Ch. D. 451; *Simpson* v. *Denny*, 10 Ch. D. 28.

Trustees.

Though the right of the party seeking the partition is limited to his interest (see *ante*, p. 142), yet where A. is tenant for life, with remainder to his children, it is no objection to an action by A. and his children already born, that the remainder is not absolutely vested, but liable to open and let in future children; for if the objection were valid, a partition could never be made where there is a settled estate, with remainder to persons who may come *in esse*: *Mills* v. *Slade*, 6 Ves. 498: *Gaskill* v. *Gaskill*, 6 Sim. 643. According to this doctrine, the person having the vested inheritance at the time, though liable to be displaced by a springing use or an executory devise, would have a sufficient estate to confer the right to and also to enforce a permanent partition. Where all or any of the shares are in settlement, the decree directs that the allotments shall be subject to the uses of the settlements: Seton, 1021. Where one of the tenants in common has made conveyances of particular parts of the property to the amount of his share among different persons, the Court will, in an action for partition of the whole estate, have regard to the particular interests so created: *Story* v. *Johnson*, 2 Y. & C. 586. As to the effect of a feoffment, &c., by one joint tenant or coparcener, see *Doe* v. *Taylor*, 2 Nev. & M. 508.

Legal estate.

In partition actions it was formerly essential that the persons having the legal title should be before

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the Court, to enable the Court to decree the proper conveyances: *Miller* v. *Warmington*, 1 J. & W. 493; see also *Anon.*, 3 Swanst. 139, n. And the rule applied to a lessee for years of part: *Cornish* v. *Gest*, 2 Cox, 27; *Story* v. *Johnson*, 2 Y. & C. 586. But this reason does not apply to a mortgagee of the *entirety*, as he would not be required to execute a conveyance to either party; and, therefore, it was not necessary to make such a person a party to the suit: *Swan* v. *Swan*, 8 Price, 518. And now under sect. 9 of the Partition Act, 1868 (31 & 32 Vict. c. 40), sect. 9, service of notice of the order is sufficient to bind persons who would formerly have been necessary parties to the action. And by leave of the Court even the service may be dispensed with in special cases, and instead thereof advertisements may be directed to be published: see the Partition Act, 1876 (39 & 40 Vict. c. 17), sects. 3, 4. Where land is subject to a mortgage, a partition or sale may be decreed subject to the mortgage: *Waite* v. *Bingley*, 21 Ch. D. 674. But a power of sale in a mortgage overrides a partition action: *Re Norris*, W. N. 1883, p. 65. In *Fawthrop* v. *Stocks* (W. N. 1884, p. 118), an inquiry was ordered in a partition action as to what incumbrances affected the property.

Partition of lands in Ireland.

An action for a partition of lands in *Ireland* cannot be sustained in England, because the Court has no jurisdiction over lands there; and, at common law, no writ of partition lay in England for lands in Ireland: *Cartwright* v. *Pettus*, 2 Ch. Cas. 214; *S. C.*, sub nom. *Carteret* v. *Petty*, 2 Swans. 323.

Commission of partition.

As to the commission of partition, and the powers and duties of the commissioners, see Lord *Redesdale's* opinions in *Curzon* v. *Lyster*, Seton, 1019.

Where under a commission for partition different returns are made by different commissioners the Court cannot act, but will issue a fresh commission: *Watson* v. *Duke of Northumberland*, 11 Ves. 153; *Corbet* v. *Davenant*, 2 Bro. C. C. 252.

A return will not be set aside on light grounds, as for mere inequality of value in respect of the allotments, if the commissioners have honestly exer-

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cised their own judgment: *Peers* v. *Needham*, 19 Beav. 316; see *Jones* v. *Totty*, 1 Sim. 136. But collusion with the parties, or other misconduct on the part of the commissioners, is a sufficient ground for setting aside a return: *Peers* v. *Needham*, *supra*. So, also, a partition which is unequally made, by a clear mistake, will be set aside, and if any of the allotments have been sold, a money compensation will be directed: *Dacre* v. *Gorges*, 2 Sim. & St. 454; see *Story* v. *Johnson*, 1 Y. & C. 537. It is now frequently the practice to dispense with the issue of a commission, and to direct all necessary inquiries to be made at Chambers. For the usual directions on a partition by commissioners or in Chambers, see Seton, 1019—1023.

Commission not now usual.

Vesting order.

Partition in equity proceeds upon conveyances to be executed by the parties, *per* Lord *Redesdale* in *Whalley* v. *Dawson*, 2 Sch. & L. at p. 372; the order of the Court of itself vests the beneficial interest in the allotments, and provides for the transfer of the legal estate by means of the conveyance: see *Miles* v. *Warrington*, 1 J. & W. 493; *Stanley* v. *Wright*, 3 Sm. & G. 18. If any of the persons in whom the legal estate is vested are under disability, the Court may, under sect. 30 of the Trustee Act, 1850 (13 & 14 Vict. c. 60), declare that any of the parties to the action in which the order for partition is made are trustees of the lands within the meaning of the Act, or that the interests of unborn persons who might claim are the interests of persons who, upon coming into existence, would be trustees within the meaning of the Act; and a vesting order or an order conveying the interests or discharging the contingent rights of such unborn persons may be made accordingly. As to the effect of this section, see Morgan, Chan. Ord. 77; Seton, 532; see also *Re Bloomar*, 2 De G. & J. 88; *Bowra* v. *Wright*, 4 De G. & Sm. 265; *Shepherd* v. *Churchill*, 25 Beav. 21; *Hubbard* v. *Hubbard*, 2 H. & M. 38; *Orger* v. *Sparke*, 9 W. R. 180; *Re Molyneux*, 10 W. R. 512. The word "unborn" has an extended signification, and includes persons who, on the death of a living party to the action, would become his

right heirs: *Basnett* v. *Moxon*, L. R. 20 Eq. 182; see also *Lees* v. *Coulton*, ibid. 20. **Partition by Action.**

A conveyance executed pursuant to an order of the Court for partition will be similar in form to a deed intended to effect a voluntary partition; except that in the former case it will be necessary instead of reciting an agreement for partition, to recite the proceedings in the action, and that the conveyance has been settled and approved by the judge: see *post*, Precedent VIII., p. 177. Form of conveyance on partition by Court.

By the Partition Act, 1868 (31 & 32 Vict. c. 40), the Court is empowered in the interest of the parties concerned in a partition action to direct a sale instead of partition of the property. This Act enacts as follows:—

Power to Court to order sale instead of division.

Sect. 3. "In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, then if it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds, would be more beneficial for the parties interested than a division of the property between or among them, the Court may, if it thinks fit, on the request of any of the parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions.

Sale on application of certain proportion of parties interested.

Sect. 4. "In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, then if the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the property to which the suit relates, request the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly, and give all necessary or proper consequential directions.

As to purchase of share of party desiring sale.

Sect. 5. "In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, then if any party interested in the property to which the suit relates requests the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among

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the parties interested, the Court may, if it thinks fit, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting a sale, direct a sale of the property, and give all necessary or proper consequential directions, and in case of such undertaking being given, the Court may order a valuation of the share of the party requesting a sale in such manner as the Court thinks fit, and may give all necessary or proper consequential directions."

Jurisdiction under the Act.

The Court has no jurisdiction under this Act to decree a partition or sale in lieu thereof where the trustees have a *trust* for sale: *Biggs* v. *Peacock*, 22 Ch. D. 284; but a mere *power* of sale in a settlement is no impediment to an order for partition or sale: *Boyd* v. *Allen*, 24 Ch. D. 622. So, also, where a testator has himself fixed the period for sale of his property and division of the proceeds, the Court cannot anticipate that period by ordering a partition or sale: *Swaine* v. *Denby*, 14 Ch. D. 326. Nor has the Court such jurisdiction, where there is an overriding power and trust for management of the property: *Taylor* v. *Grange*, 15 Ch. D. 165. And the Court can only make an order for sale under this Act where a decree for partition could have been made if the Act had not passed, and therefore can make no such order until the shares of the parties are ascertained: *Miles* v. *Jervis*, W. N. 1883, p. 203. Where some of the parties are under disability, there is no jurisdiction to order a sale out of Court: *Strugnell* v. *Strugnell*, 27 Ch. D. 258.

"Reason to the contrary."

It was held that it was no sufficient "reason to the contrary" within the meaning of sect. 4, so as to prevent an order being made for partition of certain leasehold houses, that the income of an infant co-owner would be materially diminished: *Rowe* v. *Gray*, 5 Ch. D. 263.

An order may be made for sale of part of the estate and division of the remainder: *Roebuck* v. *Chadebet*, L. R. 8 Eq. 127.

By sect. 7 of this Act, sect. 30 of the Trustee Act, 1850 (see *ante*, p. 148), is extended to all partition suits in which the Court directs a sale instead of a division of the property. And sect. 1

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of the Trustee Extension Act, 1852 (15 & 16 Vict. c. 55), empowering the Court in certain cases to appoint a person to convey, applies to sales under the Partition Acts, and is not limited to cases of persons under disability: *Beckett* v. *Sutton*, 19 Ch. D. 646.

Costs.

With respect to costs in cases of partition, the old rule was, that in these cases no other costs were given, excepting those of issuing, executing, and confirming the commission, which are borne by the parties, in proportion to the *value* of their respective interests; but no costs were allowed of the previous or subsequent proceedings: *Agar* v. *Fairfax*, 17 Ves. 558; see *Metcalf* v. *Beckwith*, 2 P. Wms. 378; *Baring* v. *Nash*, 1 V. & B. 554; *Landell* v. *Baker*, L. R. 6 Eq. 268. But since the Partition Act, 1868, costs are in the discretion of the Court, and it seems that in the absence of special circumstances (see *Wilkinson* v. *Joberns*, L. R. 16 Eq. 14), the costs of a partition action up to the hearing, as well as of all the subsequent proceedings will be borne by the several parties in proportion to their interests: *Cannon* v. *Johnson*, L. R. 11 Eq. 90; *Ball* v. *Kemp-Welch*, 14 Ch. D. 512; see *Miller* v. *Marriott*, L. R. 7 Eq. 1; *Leach* v. *Westall*, 17 W. R. 313; *Simpson* v. *Ritchie*, L. R. 16 Eq. 103.

Where a defendant unsuccessfully set up an alleged agreement in bar of the plaintiff's right to a partition, he was directed to pay so much of the costs as were occasioned by that part of the defence: *Morris* v. *Timmins*, 1 Beav. 411.

A purchaser of an undivided share of a defendant who was made a party by amendment to a partition suit, was held to be entitled to have his costs paid by the plaintiff: *Williams* v. *Williams*, 10 W. R. 609; see *Wilkinson* v. *Castle*, 16 W. R. 501.

In a partition suit, where the defendants were infants and the Court decreed a sale under the Partition Act, 1868 (*supra*), it was ordered that the costs of all parties should be paid out of the estate: *Osborn* v. *Osborn*, L. R. 6 Eq. 338. The old rule was to charge the costs of infants and

Partition by Land Commissioners.

lunatics on the shares allotted to them: *Cox* v. *Cox*, 3 K. & J. 544; *Hubbard* v. *Hubbard*, 2 H. & M. 38; *Singleton* v. *Hopkins*, 4 W. R. 107.

Taxation.

Costs of a partition action, unless with the consent of all parties, will be allowed only as between party and party: *Ball* v. *Kemp-Welch*, 14 Ch. D. 512.

Commissioners have no lien on commission.

The commissioners have no lien on the commission for their charges, and they cannot insist on payment in the first instance before they return the commission with this certificate: *Young* v. *Sutton*, 2 Ves. & B. 366.

Partitions under the Inclosure Acts.

Land Commissioners.]—Partitions are now sometimes effected by the order of the Land Commissioners for England and Wales, under the Inclosure Acts, without the necessity for any conveyance. The several Inclosure Acts, 1845 to 1847 (8 & 9 Vict. c. 118; 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111), enabled exchanges to be effected by an order of the Inclosure Commissioners (*i*), without deed, and by sect. 7 of the Inclosure Act, 1848 (12 & 13 Vict. c. 83), these powers were extended to partitions. Other statutes have been since passed relating to the jurisdiction of the commissioners as to partitions, viz., the stats. 15 & 16 Vict. c. 79; 17 & 18 Vict. c. 97; 21 & 22 Vict. c. 31; 22 & 23 Vict. c. 43. By the last-mentioned Act, sects. 10, 11, a reversion upon a lease may be partitioned by order of the commissioners, and the rent apportioned, without the concurrence of the lessee; and the provisions of the several Acts above mentioned as to dissent are not to apply where the application for a partition is made by a person or persons interested to the extent of two-thirds of the value in the property the subject of the application (*k*). By the stat. 31 & 32 Vict. c. 89, the pro-

(*i*) By virtue of the Settled Land Act, 1882, sect. 48, the Inclosure Commissioners have become and are now styled the Land Commissioners for England.

(*k*) The provisions of the above-mentioned Acts relating to exchanges and partitions of land are stated, and the mode of effecting the same is considered *ante*, sub tit. AGREEMENTS, Vol. I.,

visions of the former Acts have been further amended and extended. The effect of an order of the commissioners is to transfer to the lands and hereditaments allotted in severalty in respect of each share, the uses, trusts, powers and provisions previously existing with regard to the undivided share.

Partition by Act of Parliament.

Partition by Act of Parliament.]—Formerly, partitions were not unfrequently effected by means of an Act of Parliament, but this course is now very rarely resorted to. A private Act operates as a conveyance, and transfers the legal estate to the trustees appointed to make the partition, or immediately to the parties themselves, if the property which each is to take has been previously ascertained, without any conveyance by the parties; and it binds infants, and other persons under disabilities.

Partition by Act of Parliament.

By sect. 94 of the Stamp Act, 1870 (33 & 34 Vict. c. 97), which is set out in full (*ante*, sub tit. EXCHANGE, Vol. II. p. 929), it is in effect provided that where any consideration is paid, exceeding 100*l.*, for equality of partition the principal or only instrument, whereby the partition is effected, is chargeable with *ad valorem* duty as a conveyance on sale for such consideration: where there are several instruments the principal instrument must be ascertained, as provided by sects. 76 and 77 of the Act; and a duplicate or counterpart will bear a stamp of 5*s.* In any other case the Schedule to the Act imposes a stamp of 10*s.*

Stamps on partitions.

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p. 520, note (*m*). The office of the Land Commissioners is at No. 3, St. James' Square, London, where all necessary information as to the necessary procedure for effecting a partition under the Inclosure Acts can be obtained on application by parties interested.

PRECEDENTS.

I. *DEED of* PARTITION *of* FREEHOLDS *between* TWO TENANTS IN COMMON.

Parties.

Recitals: of title;

of agreement for partition;

of agreement as to custody of deeds.

Testatum.

Conveyance by tenants in common.

Parcels by reference to schedules.

THIS INDENTURE (*a*), made the —— day of ——, 18—, BETWEEN [A. B.], of &c., of the first part; [C. D.], of &c., of the second part; and [*grantee to uses*], of &c., of the third part: WHEREAS under or by virtue of the will dated the —— day of ——, 18—, of [*testator*], late of ——, deceased, who died on the —— day of ——, 18—, the said [A. B.] and [C. D.] are now seised of, or entitled to the several messuages and hereditaments hereinafter described, in equal undivided moieties as tenants in common in fee simple in possession free from incumbrances; AND WHEREAS the said [A. B.] and [C. D.] have agreed to effect a partition of the said messuages and hereditaments in manner hereinafter appearing; AND WHEREAS upon the treaty for the said partition, it was agreed that the deeds and documents of title relating to the said premises hereinafter described should be retained by the said [A. B.], who should enter into such acknowledgment and undertaking with respect thereto as are hereinafter contained (*b*). NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and for the purpose of effecting such partition, they, the said [A. B.] and [C. D.], according to their respective shares and interests respectively, hereby grant, and, as beneficial owners, convey unto the said [*grantee to uses*] and his heirs, ALL THOSE several messuages, closes of land, and hereditaments situate at ——, in the county of ——, and particularly described in the First and Second Schedules hereunder written (*c*);

(*a*) Stamp 10*s*.

(*b*) For a form of recital adapted to different circumstances, see next Precedent.

(*c*) This is the most usual and convenient mode of describing the parcels in a partition deed; it may also often be advisable to refer to a plan annexed to the deed, as in the next Precedent, *post*, p. 158.

I. Of Freeholds by Tenants in Common.

TOGETHER with all ways and easements now or at any time heretofore used or enjoyed therewith (*d*); TO HOLD the premises unto the said [*grantee to uses*] and his heirs, AS TO the messuages, lands, and hereditaments described in the said First Schedule, TO THE USE of the said [A. B.], his heirs and assigns, to be henceforth held by him and them in severalty; AND AS TO the messuages, lands, and hereditaments described in the said Second Schedule, TO THE USE of the said [C. D.], his heirs and assigns, to be henceforth held by him and them in severalty (*e*). AND THIS INDENTURE ALSO WITNESSETH that in pursuance of the

Easements.

Habendum.

Acknowledgment and undertaking as to deeds.

(*d*) Notwithstanding that sect. 6 of the Conveyancing and Law of Property Act, 1881, renders the insertion of general words in most cases useless, it seems prudent in the case of a partition to insert an express grant of rights and easements which will operate as a grant *de novo* of any formerly existing rights and easements which may have been extinguished by unity of possession: see *ante*, p. 130.

(*e*) If by reason of the property being situate in some part of her Majesty's dominions to which the provisions of the Conveyancing and Law of Property Act, or of any similar Act, do not extend, or if, for any other reason, it is desired to insert express covenants for title in the deed, the words "as beneficial owner" will be omitted from the operative part of the deed, and the following form of covenants may be here inserted:—

"AND the said [A. B.], so far as respects only the one undivided moiety, of which he claims to be seised, as is hereinbefore recited, of the premises hereby expressed to be conveyed, the said [A. B.], and of his ancestors and testators respectively, and those claiming under them respectively; and the said [C. D.], so far as respects only the other undivided moiety of the said premises, and so far as respects the acts, deeds, and defaults of him the said [C. D.], and of his ancestors and testators respectively, and those claiming under them respectively, for themselves, the said [A. B.] and [C. D.] respectively, hereby covenant with the said [*grantee*], that, notwithstanding any thing done, omitted, or knowingly permitted by the said [A. B.] and [C. D.] respectively, or by any of their ancestors or testators, the said [A. B.] and [C. D.] have power to grant and convey all the premises hereby expressed to be conveyed to the uses and in manner aforesaid; AND THAT the same premises shall at all times hereafter remain to the several uses herein-

Covenants for title;

for right to convey;

for quiet enjoyment;

I. Of Freeholds by Tenants in Common.

said agreement in this behalf, and in consideration of the premises, the said [A. B.] hereby acknowledges the right of the said [C. D.] to the production of the several deeds and documents of title mentioned in the Third Schedule hereunder written, and to delivery of copies thereof, and undertakes for the safe custody thereof.

In witness, &c.

The First Schedule above referred to.

The Second Schedule above referred to.

The Third Schedule above referred to.

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before declared concerning the same respectively, and be quietly held and enjoyed, and the rents and profits thereof received accordingly, without any interruption or disturbance by the said [A. B.] and [C. D.] respectively, or any person or persons claiming from, through, or in trust for them respectively, or any of their ancestors or testators; And that, free and discharged, or by the said [A. B.] and [C. D.] respectively, or their respective heirs, executors, or administrators, effectually indemnified from or against all estates, charges, incumbrances, claims, and demands whatsoever, made, created, or occasioned by the said [A. B.] and [C. D.] respectively, or any person or persons claiming from, through, or in trust for them, or any of their ancestors or testators respectively; And further, that the said [A. B.] and [C. D.] respectively, and every person having or claiming through, or in trust for them respectively, or any of their ancestors or testators respectively, will, at all times hereafter, on the request and at the cost of the said [C. D.] and [A. B.] respectively, or other the person or persons for the time being seised of or interested in the premises under the uses hereinbefore declared, execute, and do every such assurance and thing for more effectually assuring all or any of the premises hereby expressed to be conveyed to the use hereinbefore declared, as by the said [C. D.] and [A. B.] respectively, or other such person or persons as aforesaid, shall be reasonably required.

free from incumbrances;

and for further assurance.

II. *DEED of* Partition *of* Freehold Messuages *between* Two Co-Heiresses, *a sum being paid for* Equality *of* Partition, Exception *of* Mines *and* Minerals.

THIS INDENTURE (*f*), made the —— day of ——, 18—, Between [A. B.], of &c., of the first part; [C. B.], of &c., of the second part; and [*grantee to uses*], of &c., of the third part: Whereas [D. B.], late of &c., being at the date of his death hereinafter mentioned seised of or entitled unto the messuages and hereditaments particularly mentioned in the First and Second Schedules hereunder written respectively, for an estate of inheritance in fee simple in possession, free from incumbrances, died on the —— day of ——, 18—, intestate, leaving his two daughters, the said [A. B.] and [C. B.], his only issue him surviving; And whereas the said [A. B.] and [C. B.] are desirous of making a partition of the said messuages and hereditaments; and they have agreed that the messuage numbered ——, in —— place, and other the hereditaments particularly described in the First Schedule hereunder written, shall be taken and enjoyed by the said [A. B.] in severalty, in lieu of her undivided share of the entirety of the said messuages and hereditaments; and that the several messuages and hereditaments particularly mentioned in the Second Schedule hereunder written, shall be taken and enjoyed by the said [C. B.] in severalty, in lieu of her undivided share of the entirety of the said hereditaments, and also that the sum of £—— shall be paid by the said [A. B.] to the said [C. B.] for equality of partition; But it has been agreed that the partition so made shall not include any mines or minerals in, upon, or under, but only the surface of the hereditaments and premises hereinafter described and hereby conveyed; And whereas the said [A. B.] and [C. B.] are desirous that the hereditaments so to be allotted to them respectively, should be conveyed and assured in the manner hereinafter appearing; And whereas the deeds and documents of title mentioned in the Third Schedule hereunder written, relate not only to the said messuage and hereditaments so allotted

Parties.

Recitals of parties being entitled in co-parcenary,

—of agreement to make partition;

—of the intention to convey;

—as to custody of deeds.

(*f*) Stamp 10*s.*, and *ad valorem* as on conveyance by way of sale in respect of the equality money, if exceeding £100. Stamp.

II. Of Freeholds by Co-heiresses.

to the said [A. B.] as aforesaid, but also to certain closes thereto adjoining and forming part of the hereditaments hereby allotted to the said [C. B.]; and it has been agreed that such deeds and documents shall be retained by the said [A. B.], and that she should enter into the acknowledgment and undertaking hereinafter contained with respect to the same.

Testatum.

Co-parceners, according to their respective interests convey.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the premises, and also in consideration of the sum of £—— now paid by the said [A. B.] to the said [C. B.] for equality of partition, the receipt of which sum the said [C. B.] hereby acknowledges, the said [A. B.] and [C. B.] hereby, so far as relates to their respective undivided moieties or other shares or interests therein respectively, hereby grant, and as beneficial owners, convey unto the said [*grantee*], and his heirs, ALL THOSE the several messuages, lands, and hereditaments situate in the parishes of —— and —— respectively, in the county of ——, and particularly mentioned in the First and Second Schedules hereunder written respectively, and delineated with the abuttals in the map or plan hereunto annexed, wherein the messuage and hereditaments mentioned in the said First Schedules are enclosed with a pink line, and the several messuages and hereditaments mentioned in the said Second Schedule being situate on, or forming several separate and detached pieces or plots of ground, are enclosed with blue lines respectively; TOGETHER with all ways, &c. [*ut ante*, p. 155], EXCEPT, nevertheless, and always reserved out of this present conveyance, all mines and minerals in, upon, or under the hereditaments and premises hereby conveyed or any part thereof; TO HOLD the premises, except as aforesaid, unto the said [*grantee*] and his heirs to the uses following, that is to say: AS TO the said messuage and hereditaments mentioned in the said First Schedule, TO THE USE of the said [A. B.], her heirs and assigns, to be henceforth held by her and them in severalty; AND AS TO the said several messuages and hereditaments mentioned in the said Second Schedule, TO THE use of the said [C. B.], her heirs and assigns, to be henceforth held by her and them in severalty: PROVIDED ALWAYS, and it is hereby agreed and declared that all mines and minerals in, upon, or under the hereditaments hereby conveyed, and every part thereof, shall continue to be held and

Parcels by reference to schedules and plan.

Exception of mines, &c.

Habendum.

Proviso that mines, &c., shall continue to be held in common.

enjoyed by the said [A. B.] and [C. B.], and their respective heirs and assigns, according to their undivided shares and interests therein respectively, as if this present partition and conveyance had not been made: [*Acknowledgment and undertaking as to deeds, ante*, p. 155].

II. Of Freeholds by Coheiresses.

In witness, &c.

The First Schedule above referred to.

The Second Schedule above referred to.

The Third Schedule above referred to.

III. *DEED of* Assignment *in the Nature of a Partition, by* Two Tenants *in* Common *mutually* assigning *their respective Shares in* Leasehold Property *held under* Several Leases (*g*).

THIS INDENTURE (*h*), made the —— day of ——, 18—, Between [A. B.], of, &c., of the one part; and [C. D.], of, &c., of the other part: Whereas [*recite two leases, respectively comprising the several messuages afterwards described, granted to* [R. S.]; *also the will of* [R. S.], *bequeathing all his personal estate to* [A. B.] *and* [C. D.], *as tenants in common, and appointing them executors; and the death of*

Parties.

Recital of leases.

(*g*) Where a partition is to be made of leasehold property, it is effected either by procuring all the part owners to concur in assigning the entirety to a third person, upon trust to assign to the several parties their respective allotments, or each joint-owner assigns to the others his undivided share in the parts to be taken in severalty by them. The advantage of the latter mode is, that the partition is effected by a single deed, and therefore it has been adopted in the present instance. If the property is vested in a trustee, of course a separate assignment must be taken from him.

Remarks upon the partition of leaseholds.

It may be observed, that, if the portions of a leasehold estate allotted to several parties be comprised in one lease, an apportionment of the reserved rent would be requisite; and it would be proper to give cross-powers of distress to the respective parties; for which see next Precedent. The lease also, in such case, should be deposited with a third person for the mutual benefit of the parties, or delivered to one of them, he undertaking to produce it to the other or others.

(*h*) As to stamp, see *ante*, p. 157, note (*f*).

III. Of Leaseholds held under Several Leases.

the testator, and the grant of probate of his will, in the usual manner]; AND WHEREAS the said [A. B.] and [C. D.] have agreed that the undivided moiety of the said [A. B.], of and in the messuage and premises comprised in the firstly hereinbefore-recited lease, shall be assigned to the said [C. D.]; and that, in consideration thereof, the undivided moiety of the said [C. D.], of and in the messuage and premises comprised in the second hereinbefore-recited lease, shall be assigned to the said [A. B.]; and, inasmuch as the value of the messuage to be allotted in severalty to the said [C. D.] exceeds the value of the messuage to be allotted to the said [A. B.], it has been agreed that the said [C. D.] shall pay to the said [A. B.] the sum of £——, as an equivalent for such excess, so far as respects the moiety of the said [A. B.]. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the assignment hereinafter contained, and also in consideration of the sum of £——, for equality of partition now paid by the said [C. D.] to the said [A. B.], the receipt whereof the said [A. B.] hereby acknowledges, he, the said [A. B.], hereby assigns, and, as beneficial owner, conveys unto the said [C. D.], ALL THAT the undivided moiety of him, the said [A. B.], of and in all and singular the messuage or tenement and premises comprised in and demised by the first hereinbefore-recited indenture of lease, dated the —— day of ——, 18—, TO HOLD the said moiety, half-part or share, or other the premises hereinbefore assigned unto the said [C. D.], his executors, administrators, and assigns, henceforth during all the residue now unexpired of the term of —— years, granted by the first hereinbefore-recited lease; subject, nevertheless, to the payment of the rent, and to the performance and observance of all and singular the covenants, conditions, and agreements, respectively reserved and contained by and in the same lease, on the lessee's part henceforth to be paid, observed, and performed, so far as the same relate to the undivided moiety hereinbefore assigned. AND THIS INDENTURE ALSO WITNESSETH that, in further pursuance of the said agreement, and in consideration of the assignment hereinbefore contained, the said [C. D.] hereby assigns, and, as beneficial owner, conveys unto the said [A. B.], ALL THAT undivided moiety

Agreement for mutual assignment.

And for payment of a sum of money.

Testatum.

[A. B.] assigns to [C. D.] his moiety in premises comprised in first lease.

In consideration of assignment before contained, [C. D.] assigns to [A. B.] his moiety in premises comprised in second lease.

III. Of Leaseholds held under Several Leases.

of him the said [C. D.], of and in all and singular the messuage or tenement and premises comprised in and demised by the secondly hereinbefore recited lease, dated the —— day of ——: To HOLD the said moiety, half-part or share, and premises lastly hereby assigned unto the said [A. B.], his executors, administrators, and assigns, henceforth, during all the residue now unexpired of the term of —— years, granted by the secondly hereinbefore-recited lease, SUBJECT, nevertheless, to the payment of the rent, and to the performance and observance of the several covenants and conditions reserved and contained by and in the secondly hereinbefore mentioned lease, so far as the same relate to the undivided moiety or equal half-part lastly hereby assigned; AND THE said [A. B.] hereby covenants with the said [C. D.] that he, the said [A. B.], his executors, administrators, or assigns will henceforth from time to time duly pay the rent and perform and observe all the covenants and conditions reserved and contained by and in the first hereinbefore mentioned lease, and henceforth, on the part of the lessee, to be paid, observed, and performed respectively; AND WILL also keep the said [C. D.], his heirs, executors, administrators, estate and effects indemnified from and against all proceedings, costs, damages, claims, and demands for or on account of non-payment, breach, non-performance, or non-observance of any such rents, covenants, or conditions; AND THE said [C. D.] hereby covenants with the said [A. B. [*similar covenant to pay rent, &c., in respect of premises comprised in* "the secondly hereinbefore recited lease," *and to indemnify* [A. B.] *therefrom*] (*h*).

Habendum.

Subject to rents, &c.

Covenants by [A. B.] to pay rents, &c.

Similar covenants by [C. D.].

IN WITNESS, &c.

(*h*) See as to inserting express covenants for title, *ante*, p. 155, note (*e*). The express covenants for title in a partition deed relating to leaseholds would be similar to those in the case of freeholds there given, substituting the words "assign" instead of "grant," "for the term" instead of "to the use," and "during the said term be quietly held, &c." for "at all times hereafter remain, &c., and be quietly held, &c."; and omitting all reference to "ancestors and testators." The covenants in the present case would be by the tenants in common with each other, instead of with a grantee to uses.

IV. *DEED of* ASSIGNMENT, *in the Nature of a* PARTITION, *made between two late* PARTNERS, *of a Dwelling-house, Shop, and Warehouses, held under* ONE LEASE; APPORTIONMENT *of* RENT, *with* CROSS POWERS *of* DISTRESS.

THIS INDENTURE (*h*), made the —— day of ——,

Parties. BETWEEN [A. B.], of the one part; and [C. D.], of the other part.

Recital that [A. B.] and [C. D.] were partners; WHEREAS the said [A. B.] and [C. D.] have for sometime past carried on the trade or business of ——, in partnership, and have been interested in the capital, joint-stock and profits of the said partnership in the proportions following; (that is to say), the said [A. B.] in two-thirds thereof, and the said [C. D.] in one-third thereof;

of purchase of leasehold by them; AND WHEREAS [*recitals of a building-lease of land to original lessee for ninety-nine years, at the rent of* 14*l.* 18*s.*, *and an additional rent of* 50*l. in case certain trades were carried on in the buildings to be erected; and of assignment of lease by lessee to* [A. B.] *and* [C. D.], *and completion by them of a dwelling-house and adjacent shop and warehouses in performance of covenants in lease*];

that leaseholds were purchased for partnership purposes; AND WHEREAS the said lease was purchased by the said [A. B.] and [C. D.], and the said messuages or tenements, and other buildings, were so erected and completed by them as aforesaid, for the purposes of the said partnership business, and with and out of the joint capital thereof;

of dissolution of partnership, and settlement of accounts, &c.; AND WHEREAS the said [C. D.] has recently retired from the said business, and the said partnership has been dissolved, and the accounts between the said [A. B.] and [C. D.] have been settled, and partition and transfer, and satisfaction of their respective shares in the said partnership stock, capital, and effects, have been made and concluded, except so far as relates to the messuages and hereditaments comprised in the said indenture of assignment;

of agreement for partition. AND WHEREAS, upon the said dissolution of the said partnership, it was agreed between the parties hereto, that the messuage or dwelling-house, and other hereditaments, first hereinafter described, should belong, and be assigned to, the said [C. D.], for the residue of the said term of ninety-nine years therein now unexpired, but subject to the payment of the yearly rent of 7*l.* 9*s.*,

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(*h*) Stamp, 10*s.*

IV. Of Leaseholds held under One Lease.

being one half of the said rent of 14*l.* 18*s.*, and also to the covenants, and conditions, in the said lease contained, so far only as the same relate to the messuage and hereditaments first hereinafter described, and that the shop, warehouses, and hereditaments, secondly hereinafter described, should belong and be assigned to the said [A. B.], for the residue of the said term of ninety-nine years therein, now unexpired, but subject to the payment of the yearly rent of 7*l.* 9*s.*, being the other half of the said rent of 14*l.* 18*s.*, and also to the covenants, and conditions, in the said lease contained, so far only as the same relate to the shop, warehouses, and hereditaments, secondly hereinafter described: And it was further agreed that the hereinbefore recited lease should be retained by the said [A. B.], who should enter into the acknowledgment and undertaking with respect thereto, hereinafter contained (*i*); NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the assignment hereinafter contained, the said [A. B.] hereby assigns, and releases, and as beneficial owner conveys unto the said [C. D.] ALL THOSE the two equal undivided third parts or shares of him the said [A. B.] of and in all that messuage or dwelling-house [*describe parcels allotted to* [C. D.], being part of the premises, comprised in the said lease, TO HOLD the same unto the said [C. D.], his executors, administrators, and assigns, henceforth for the residue now unexpired of the term of ninety-nine years, so granted by the said lease as aforesaid, SUBJECT nevertheless to the payment of the apportioned yearly sum of 7*l.* 9*s.*, and also of the said increased rent of 50*l.*, in case the same shall become payable, and so far as the payment thereof shall be made necessary or be occasioned by the said [C. D.], his executors, administrators, under-tenants, or assigns, and to the observance and performance of the covenants, and conditions, contained in the said lease, on the part of the lessee, to be observed and performed, so far as such covenants, and conditions, relate to the premises hereinbefore assigned unto the said [C. D.]. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the assignment hereinbefore contained, the

Testatum:

[A. B.] assigns to [C. D.] his share in the premises;

subject to a moiety of the rent, and to covenants.

Further *testatum*:

[C. D.] assigns to [A. B.] his share in the premises;

(*i*) See as to this, *ante*, p. 159, note (*g*).

IV. Of Leaseholds held under One Lease.

said [C. B.] hereby assigns, and releases, and as beneficial owner conveys unto the said [A. B.], his executors, administrators, and assigns, ALL THAT the equal undivided third part or share of him the said [C. D.] of and in all that messuage [*describe parcels allotted to* [A. B.]], being the remiander of the premises comprised in the said lease; TO HOLD the same unto the said [A. B.], his executors, administrators, and assigns, henceforth for the residue now unexpired of the term of ninety-nine years, so granted by the said lease as aforesaid,

subject to a moiety of the rent, and to covenants.

SUBJECT nevertheless to the payment of the said apportioned yearly rent of 7*l.* 9*s.*, and also of the said increased rent of 50*l.*, in case the same shall become payable, and so far as the payment of the same shall be made necessary, or be occasioned, by the said [A. B.], his executors, administrators, under-tenants, or assigns, and to the observance and performance of all and singular the covenants, and conditions, contained in the said lease, on the part of the lessee, to be observed and performed, so far as such covenants, and conditions, relate to the premises, hereinbefore secondly described and assigned unto the said [A. B.]; AND EACH of them, the said [A. B.] and [C. D.], hereby for himself and his assigns, covenants with the other of them that they, the covenanting parties respectively, and their respective executors, administrators, and assigns, will, during the unexpired residue of the said term, duly pay the apportioned parts hereby made payable by them respectively of the said rent, reserved by the said lease as, and when the same shall become payable thereunder, and will also perform and observe the covenants, and conditions, contained in the said lease, and on the part of the lessees, to be performed and observed, so far as such covenants and conditions relate to the hereditaments, and premises, hereby conveyed to them the said covenanting parties respectively; and will indemnify and, at all times, keep indemnified the other of them, the said covenanting parties, and his executors, administrators, and assigns, and his estate and effects, against all actions and proceedings, costs, expenses, damages, claims, and demands whatsoever, by reason or on account of the non-payment of the apportioned part, hereby made payable by him, the said covenanting party, his executors, administrators, and assigns, of the rents reserved by the said lease, or by reason or on account of the breach, non-performance, or non-observance of

Mutual covenants by parties to pay rents, &c., in respect of premises allotted to them respectively.

IV. Of Leaseholds held under One Lease.

the covenants, and conditions, contained in the said lease, so far as the same are to be performed and observed by him, the said covenanting party, his executors, administrators, or assigns; And further, that all sums of money, costs, charges, or expenses, which may be incurred by such other party, his executors, administrators, or assigns, by reason, or on account of any such non-payment, breach, non-performance, or non-observance, as aforesaid, may be recovered by him or them, by entry and distress, as for rent in arrear, upon the hereditaments and premises, hereby conveyed to the said covenanting party, to the intent that all such sums of money, costs, charges, and expenses, including all costs, charges, and expenses of, and incident to such entry and distress, may be fully paid and satisfied. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the premises, the said [A. B.] hereby acknowledges the right of the said [C. D.] to production of the hereinbefore recited lease of the —— day of —— 18—, and to delivery of copies thereof, and undertakes for the safe custody thereof.

Mutual powers of distress.

Further *testatum*.

Acknowledgment and undertaking as to lease.

IN WITNESS, &c.

V. *DEED of* PARTITION *of* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS *between three* TENANTS *in* COMMON: GRANT *of* EASEMENTS *over one allotment in favour of another allotment.*

THIS INDENTURE (*k*), made the —— day of ——, BETWEEN [A.], of, &c., of the first part; [B.], of, &c., of the second part; [C.], of, &c., of the third part; and [*grantee to uses*], of, &c., of the fourth part; [*recite the will of testator, whereby he devised all his freehold, copyhold, and leasehold estates unto* [A.], [B.], *and* [C.], *his three children, as tenants in common, and appointed them executors and executrix; the death of testator, and probate of his will; also the admission of the devisees to the copyholds*]; AND WHEREAS the said [A.], [B.], and [C.] have agreed to make a partition of the several freehold, copyhold, and leasehold

Parties.

Recital of testator's will, &c.,

of agreement to make partition;

(*k*) Stamp, 10*s*.

V. Freeholds, Copyholds, and Leaseholds.

hereditaments, respectively devised and bequeathed to them as aforesaid, and that the several divided parts thereof shall be enjoyed by them respectively in severalty; and it has been agreed between the said parties that the several freehold messuages, lands, and hereditaments comprised in the First Schedule to these presents shall be allotted to and taken by the said [A.]; that the several freehold and copyhold lands and hereditaments comprised in the Second Schedule to these presents shall be allotted to and taken by the said [B.]; and that the several freehold and leasehold messuages, lands, and hereditaments comprised in the Third Schedule to these presents shall be allotted to and taken by the said [C.], in lieu of the respective undivided shares of the said [A.], [B.], and [C.], in the said several freehold, copyhold, and leasehold hereditaments so devised and bequeathed to them as aforesaid: AND WHEREAS it has also been agreed that the person or persons for the time being interested in the freehold hereditaments described in the First Schedule to these presents shall have such rights and easements as are specified in the Fourth Schedule hereunder written, over the freehold hereditaments described in the Third Schedule hereunder written: AND WHEREAS it has been also agreed that the several deeds and documents of title specified in the Fifth Schedule hereunder written, and relating to the hereditaments described in the First Schedule hereunder written as well as to other hereditaments of which a partition is intended to be hereby effected, should be retained by the said [A.], who should enter into such acknowledgment and undertaking as is hereinafter contained with respect to the deeds and documents so retained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and for effectuating the said intended partition, and in consideration of the premises, each of them the said [A.], [B.], and [C.], according to their respective undivided shares and interests in the premises hereby grants, and, as beneficial owner, conveys unto the said [*grantee to uses*], and his heirs: ALL AND SINGULAR the several freehold messuages, lands, and hereditaments respectively comprised in the First, Second, and Third Schedules to these presents, and which are delineated in the map or plan indorsed on these presents; Together with all ways, &c.; To HOLD the premises hereby granted unto the said [*grantee to uses*] and his heirs, to the uses, upon the trusts, and for

of agreement as to easements;

Of agreement as to deeds.

Testatum.

Conveyance of freeholds.

Parcels.

Habendum.

the intents and purposes hereinafter expressed and declared concerning the same, (that is to say); As to the freehold messuages, lands, and hereditaments comprised in the First Schedule to these presents, and which in the said map or plan indorsed on these presents are marked with a red colour, to the use of [A.], his heirs and assigns: And as to the several freehold lands and hereditaments comprised in the Second Schedule to these presents, and marked with a green colour in the said map or plan, to the use of the said [B.], his heirs and assigns: And as to the several freehold lands and hereditaments comprised in the Third Schedule to these presents, and marked with a yellow colour in the said map or plan, to the use that the said [A.], his heirs and assigns, and the owner or owners, occupier or occupiers, for the time being of the said freehold hereditaments and premises described in the First Schedule to these presents, may and shall have and enjoy the several rights of way and other rights and easements specified in the Fourth Schedule to these presents over the same freehold hereditaments and premises described in the Third Schedule to these presents, and subject thereto, to the use of the said [C.], her heirs and assigns (*l*). AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the above-recited agreement in this behalf, and for effectuating the said intended partition, and in consideration of the premises, they the said [A.] and [C.] respectively, but each of them as to one undivided third part of the copyhold hereditaments hereinafter mentioned only, hereby covenant with the said [B.], that the said [A.] and [C.] respectively, or their respective heirs, will, at the joint expense of the said [A.], [B.], and [C.], their heirs, executors, or administrators, so soon as conveniently may be, surrender into the hands of the lord or lords, lady or ladies, of the said manor, and they the said [A.] and [C.] respectively hereby, but each of them only as

V. **Freeholds, Copyholds, and Leaseholds.**

Uses in favour of the respective parties.

Further *testatum*.

Covenant to surrender copyholds.

(*l*) Where any party to a deed of partition wishes to subject his or her allotment to special limitations, it is, in general, better to effect this by a separate deed than to introduce the limitations into the partition deed: for instance, suppose that, in the present case, C. were about to marry, and wished to settle the lands allotted to her upon the objects of the marriage, it would be advisable that the lands should be limited to her simply in fee, as in the text, and she should convey them to the intended limitations by a subsequent deed.

Suggestion where any party wishes to settle his allotment.

V. Freeholds, Copyholds, and Leaseholds.

aforesaid, as beneficial owners convey ALL AND SINGULAR the copyhold lands and hereditaments comprised in the Second Schedule to these presents; Together with all ways, &c.; TO THE USE of the said [B.], his heirs or assigns, according to the custom of the said manor, and at and by the rents, suits, and services therefor due and of right accustomed; AND they, the said [A.] and [C.] respectively also hereby covenant with the said [B.] to pay and bear two equal third parts of the fine and other expenses attending the admittance of the said [B.] his heirs or assigns, to the said copyhold premises. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the above-recited agreement in this behalf, and for effectuating the said intended partition, and in consideration of the premises, they the said [A.] and [B.], according to their respective undivided shares and interests, respectively hereby assign and, as beneficial owners, convey unto the said [C.] ALL THOSE the said two several undivided third parts or shares of the said [A.] and [B.] respectively, of and in all and singular the leasehold messuages, lands and hereditaments comprised in the Third Schedule to these presents, together with all and singular the rights, members, and appurtenances to the said leasehold premises belonging, or in anywise appertaining, and of and in the several indentures of lease by which the same premises are respectively held, and the benefit thereof respectively; TO HOLD the said two undivided third parts or shares, and other the premises hereby assigned, unto the said [C.], her executors, administrators, and assigns, henceforth during all the respective residues now unexpired of and in the several terms, estates, and interests respectively granted by the several indentures of lease mentioned or referred to in the said Third Schedule to these presents; subject, nevertheless, to the payment, performance, and observance of the several rents, covenants, and conditions respectively reserved and contained by and in the said several indentures of lease respectively, and on the part of the lessees henceforth to be paid, observed, and performed, so far as respects the two undivided third parts hereby assigned of the said leasehold premises respectively, [*Add covenant by* [C.] *with* [A.] *and* [B.] *severally to pay the rents and perform the covenants in the several leases, and to indemnify them and the personal representatives of the testator therefrom, ut ante*, p. 161,

Further *testatum*.

Assignment of shares of [A.] and [B.] in leaseholds.

Habendum.

mutatis mutandis]: AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the premises, the said [A.] hereby acknowledges the right of the said [B.] and [C.] respectively to production of the several deeds and documents specified in the Fifth Schedule to these presents and in the first part thereof, and to delivery of copies thereof, and also the right of the said [B.] to production of the several deeds and documents specified in the same schedule and in the second part thereof, and to delivery of copies thereof, and also the right of the said [C.] to production of the several deeds and documents specified in the same schedule and in the third part thereof, and he hereby undertakes for the safe custody of all the deeds and documents specified in the same schedule.

Fourth *testatum*.

Acknowledgment and undertaking as to deeds (*m*).

IN WITNESS, &c.

[FIVE SCHEDULES.]

VI. *CONVEYANCE by way of* PARTITION *where* TWO FEMALES, *one of whom is an* INFANT, *are entitled to* SETTLED LANDS *as* TENANTS *in common* IN TAIL (*n*). APPORTIONMENT *of* RENT-CHARGE.

THIS INDENTURE (*o*), made the —— day of ——, 18—, BETWEEN [A. B.], of, &c. [*one of the tenants in tail*], of the first part; [E. F.], of, &c., and [G. H.], of, &c. [*trustees of the settlement*], on behalf of [C. B.], of, &c. [*the other tenant in tail*], an infant, of the second part; and [X. Y.] [*grantee to uses*], of the third part: WHEREAS by an indenture of settlement, dated the —— day of ——, 18—, and expressed to be made between [J. B.], of the first part [K. B.], [*his wife*], then [K. D.], spinster, of the second part, and the said [E. F.]

Parties.

Recitals: of settlement

(*m*) The deeds, &c., in the first part of the Fifth Schedule in the above Precedent relate to the whole property; those in the second part relate to the common title to the shares of [A.] and [B.]; those in the third part relate to the common title to the shares of [A.] and [C.]

(*n*) Tenants in tail are among the limited owners of settled lands on whom statutory powers are conferred by the Settled Land Act, 1882: see sect. 58 of that Act.

(*o*) Stamp, 10*s*.

VI. Partition Deed under Settled Land Acts.

and [G. H.], of the third part (being a settlement made in consideration of the marriage afterwards solemnized between the said [J. B.] and [K. B.]), the lands and hereditaments hereinafter described were settled to the uses therein mentioned until the solemnization of the said marriage, and thereafter to the use of the said [J. B.], during his life, without impeachment of waste, with remainder to use that the said [K. B.], if she should survive him, might receive a yearly rent-charge of £——, as therein mentioned, and subject thereto to the use of the said [E. F.] and [G. H.] for a term of 500 years on the trusts therein declared for securing the said rent-charge, and subject thereto to the use of the first and other sons of the said [J. B.] and [K. B.] successively in tail male, with remainder to the use of the same first and other sons successively in tail, with remainder to the use of all the daughters of the said [J. B.] and [K. B.] in equal shares as tenants in common in tail, with remainders over; And in the indenture now in recital was limited to the said [E. F.] and [G. H.] a power of sale of the settled land as therein mentioned (*p*):

of state of family;

And whereas the said [J. B.] died on the —— day of ——, 18—; And whereas no sons were born of the marriage of the said [J. B.] and [K. B.]; And the said [A. B.] and [C. B.] are the only daughters of the marriage, of whom the said [A. B.] attained the age of twenty-one years on the —— day of ——, 18—, but the said [C. B.] is an infant;

of agreement for partition and apportionment of rent-charge;

And whereas it has been agreed between the said [A. B.] and the said [E. F.] and [G. H.] (on behalf of the said [C. B.]) that such partition of the lands and hereditaments comprised in the said indenture of settlement, all which same premises are particularly mentioned in the First and Second Schedules hereunder written respectively, shall be effected as hereinafter contained, And that the said rent-charge shall be apportioned in manner hereinafter appearing;

of agreement as to custody of title deeds.

And whereas the several deeds and documents of title specified in the Third Schedule hereunder written relate to lands and hereditaments described in the said First Schedule hereunder written, and it has been agreed that the possession of

(*p*) The persons who are for the time being under a settlement trustees with power of sale of the settled land are "trustees of the settlement" within the meaning and for the purposes of the Settled Land Acts: see sect. 2 (8) of the Act of 1882 (45 & 46 Vict. c. 38).

VI. Partition Deed under Settled Land Acts.

the same shall be retained by the said [A. B.]; And the several deeds and documents of title specified in the Fourth Schedule hereunder written relate to lands and hereditaments described in the said Second Schedule hereunder written, and it has been agreed that the possession of the same shall be retained by the said [E. F.] and [G. H.], on behalf of the said C. D.]; And it has been further agreed that the said [A. B.] and the said [E. F.] and [G. H.] shall enter into the acknowledgments and undertakings on their respective parts hereinafter contained. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and for effectuating the said desire, and in consideration of the premises, and by virtue of the powers in this behalf conferred on the parties hereto respectively by the Settled Land Act, 1882, and of all other powers (if any) them hereunto enabling respectively, the said [A. B.], so far as regards her undivided moiety of the lands and hereditaments hereinafter described, and as tenant for life in possession thereof under the said indenture of settlement, grants, and as beneficial owner, conveys, and the said [E. F.] and [G. H.], on behalf of the said [C. B.], and so far as regards her undivided moiety of the same hereditaments, and as such trustees of the said settlement as aforesaid, grant, and as trustees convey unto the said [X. Y.]; ALL THOSE [*describe parcels by reference to schedules, ante*, p. 154]; TO HOLD unto the said [X. Y.] and his heirs, AS TO the lands and hereditaments described in the said First Schedule, TO THE USE of the said [A. B.], and the heirs of her body (*q*), to be henceforth held by her and them in severalty; AND AS TO the lands and hereditaments described in the said Second Schedule TO THE USE of the said [C. B.], and the heirs of her body; BUT AS TO the entirety of the lands and hereditaments hereby conveyed; SUBJECT to the said rent-charge; AND with remainder TO THE USES upon the trusts, and with, under and subject to the powers, provisions, and declarations, declared in the said indenture of settlement of and concerning the premises therein comprised, subsequent to the limitation thereof, to the use of all the daughters of the said marriage as tenants in common in tail, so far as the same uses, trusts,

Testatum.

Conveyance of undivided moieties.

Habendum.

As to one moiety to use of [A. B.] in tail.

As to other moiety to use of [C. B.] in tail.

As to entirety subject to rent-charge and with remainder to subsequent uses of settlement.

(*q*) If it is desired to cut off the entail in the moiety allotted to [A. B.], this may be effected by a separate disentailing deed, as this deed is necessarily somewhat long for enrolment. For a precedent of disentailing deeds, see *post*, tit. SETTLEMENTS.

VI. Partition Deed under Settled Land Acts.

powers, provisions, and declarations shall take effect with respect to the said moieties, or either of them, hereby conveyed in severalty respectively; PROVIDED ALWAYS, and it is hereby agreed and declared that, as between the said [A. B.] and [C. B.], and all persons claiming under them respectively or under the limitations of the said indenture of settlement, to take effect on the determination or defeasance of the respective estates tail of the said [A. B.] and [C. B.] respectively, and the lands and hereditaments hereby allotted to them respectively in severalty, the said rent-charge shall be apportioned in manner following, that is to say: The yearly sum of £——, being one moiety of the said rent-charge, shall be charged upon the lands and hereditaments described in the First Schedule in exoneration of the said lands and hereditaments described in the said Second Schedule; AND the yearly sum of £——, being the other moiety of the said rent-charge, shall be charged upon the lands and hereditaments described in the said Second Schedule in exoneration of the said lands and hereditaments described in the said First Schedule: AND IT IS HEREBY AGREED AND DECLARED that if at any time or times hereafter any distress, entry, claim, or demand shall be levied or made upon or in the land and hereditaments described in the said First Schedule, or any part or parts thereof, or upon the owner or occupier of the same, for recovering payment of the said yearly sum of £—— hereby charged upon the said lands and hereditaments described in the said Second Schedule, and that if and whenever the said [A. B.], her heirs or assigns, shall pay or incur any sums of money, costs, charges or expenses, by reason or on account of any such distress, entry, claim, or demand as aforesaid, then and in every such case it shall be lawful for the person or persons for the time being entitled in possession to the hereditaments whereupon or wherein any such distress, entry, claim, or demand as aforesaid, or for such owners or occupiers as aforesaid, against whom such money or costs shall be recovered as aforesaid, to enter and to distrain into and upon the said lands and hereditaments described in the said Second Schedule, or any part thereof, in the same manner as landlords may do for rent in arrear, to the intent that by the means aforesaid the said [A. B.], her heirs and assigns, may be fully repaid and satisfied all sums of money, costs, charges, damages, and expenses which she or they may have paid, incurred or

Apportionment of rent-charge.

Powers of distress as to apportioned moieties of rent-charge.

VI. Partition Deed under Settled Land Acts.

sustained by reason or in consequence of such distress, entry, claim or demand as aforesaid, or otherwise in relation to the said yearly sum of £——, including all costs, charges, and expenses incident to any such distress or distresses as aforesaid: AND IT IS HEREBY FURTHER AGREED AND DECLARED that, &c. [*similar power to* [C. B.] *in respect of the other part of the rent-charge*]; AND THIS INDENTURE ALSO WITNESSETH that in pursuance of the said agreements in this behalf, and in consideration of the premises, the said [A. B.], as to the deeds and documents specified in the said Third Schedule hereunder written, hereby acknowledges the right of the said [E. F.] and [G. H.], during the minority of the said [C. D.], and thereafter of the said [C. D.] to production and delivery of copies of the same, and undertakes for the safe custody thereof; AND the said [E. F.] and [G. H.], on behalf of the said [C. D.], as to the deeds and documents of title specified in the said Fourth Schedule hereunder written, hereby acknowledge the right of the said [A. B.] to production and delivery of copies of the same, [and undertake for safe custody thereof (*q*)].

Further *testatum.*

Acknowledgments and undertakings as to deeds.

IN WITNESS, &c.

[FOUR SCHEDULES.]

VII. *PARTITION DEED, where* ONE SHARE *is* SUBJECT *to a* SETTLEMENT, *the* TRUSTEES *of which exercise a* POWER *of* REVOCATION *and* NEW APPOINTMENT *to effect the partition—the* SETTLED SHARE *alone is to be held in* SEVERALTY, *the* CO-OWNERS *of the* REMAINING SHARES *continuing to hold as* TENANTS IN COMMON.

THIS INDENTURE (*r*), made the —— day of ——, 18—, BETWEEN [*owner in fee of first share*], of, &c., of the first part; [*owner in fee of second share*], of, &c., of the second part; [*trustee*] of, &c., and [*trustee*] of, &c., of the third part; [*tenant for life of third share*], of, &c., of the

Parties.

(*q*) As to whether trustees should undertake for safe custody of deeds, see *ante*, Vol. I., p. 256.

(*r*) Stamp, 10*s.*

VII. Partition by Revocation of Uses and New Appointment.

Recitals:

of seisin and death of last owner;

of settlement of one share;

fourth part; and [*grantee to uses*], of, &c., of the fifth part. WHEREAS [A. B.], late of ——, deceased, being seised in fee-simple of the hereditaments hereinafter described, which are of gravelkind tenure, died intestate on the —— day of ——, 18—, leaving the said [*owners in fee*] and [*tenant for life*], his co-heirs at law, him surviving: AND WHEREAS, by an indenture of settlement, dated the —— day of ——, 18—, and made between the said [*tenant for life*], of the first part; [*his wife*], of, &c., therein called [C. D.], spinster, of the second part; and the said [*trustees*], of the third part (being the settlement executed previously to the marriage of the said [*tenant for life*] and [*wife*]), all that the one undivided third part or share of him the said [*tenant for life*] of and in the pieces or parcels of land and hereditaments, the inheritance in fee-simple whereof had descended to the said [*owners in fee*] and [*tenant for life*] as aforesaid, was conveyed to the uses, upon the trusts, for the intents and purposes, and subject to the powers, provisoes, and declarations therein expressed and declared concerning the same, under or by virtue of which the said [*tenant for life*] is tenant for life in possession of the said equal third part or share, thereby assured, with remainders over: And in the indenture now in recital was contained a power enabling the said [*trustees*], or the survivor of them, or other the trustees or trustee for the time being of the same, to sell the said equal third part or share thereby settled (*s*), and also a power enabling them and him to concur with the person or persons for the time being entitled to the other undivided equal third parts or shares of the said hereditaments, or empowered to make a partition thereof, in making a partition of the hereditaments whereof one undivided third part or share was thereby assured, and to pay or receive any sum or sums of money for equality of partition; and for the purpose of giving effect to the power and authority thereinbefore contained, the said trustees or trustee were or was empowered, by any deed or deeds, to revoke and make void all and every the uses, trusts, powers, provisoes, and declarations, in the said indenture expressed and declared of and concerning the one undivided equal third part or share thereby assured, of and in the said hereditaments, and by the same or any other deed or deeds, to limit and declare any new

(*s*) See as to this, *ante*, p. 170, note (*p*).

VII. Partition by Revocation of Uses and New Appointment.

or other uses, estates, and limitations concerning the same: AND WHEREAS the said [*owners in fee*], and also the said [*trustees*], with the consent of the said [*tenant for life*], testified in manner hereinafter appearing (*t*), in execution of their hereinbefore-recited power in this behalf, have agreed to make partition of the hereditaments hereinafter described, to the intent that the hereditaments first hereinafter described might henceforth be taken and enjoyed by the said [*owners in fee*], their heirs and assigns, as tenants in common in the shares and in manner hereinafter appearing; and that the hereditaments secondly hereinafter described, might henceforth be taken and enjoyed in severalty by the persons respectively who would be entitled to the undivided share comprised in the said indenture of settlement, of the entirety hereditaments hereinafter described, if the same had remained entire and undivided: AND WHEREAS, after a careful admeasurement, survey, and valuation of the said hereditaments, by competent and indifferent persons, as well on the part of the said [*trustees*] as of the said [*owners in fee*], it has been agreed, that the hereditaments first hereinafter described shall be accepted and taken by the said [*owners in fee*] in lieu of and in substitution for their undivided shares in the hereditaments hereby assured, to be enjoyed by the said [*owners in fee*], their heirs and assigns, as tenants in common, and that the hereditaments secondly hereinafter described shall be accepted and taken by the said [*trustees*] in lieu of and in substitution for the undivided share comprised in the hereinbefore-recited indenture of settlement, to be enjoyed by the person or persons entitled thereto in severalty: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and for the purpose of carrying into effect the said intended partition, and in consideration of the premises, they the said [*owners in fee*], according to their respective shares and interests grant, and as beneficial owners convey unto the said [*grantee to uses*], and his heirs, ALL THOSE the two undivided equal third parts or shares of them the said [*owners in fee*], of and in the several pieces or parcels of ground and hereditaments hereinafter described (that is to say), First, ALL THAT, &c. (*describe*

of agreement for partition;

as to the respective allotments agreed upon.

Testatum.

Grant by owners in fee of two undivided third shares.

(*t*) The consent of the tenant for life is necessary to the exercise by the trustees of their power of partition under the settlement: see *ante*, p. 136.

VII. Partition by Revocation of Uses and New Appointment.

parcels): And secondly, ALL THAT, &c. [*describe parcels*]; Together with all ways, &c.; TO HOLD the said two undivided equal third parts or shares hereby granted, of and in all and singular the hereditaments hereinbefore described, unto the said [*grantee to uses*], and his heirs, TO SUCH USES, upon such trusts, and for such intents and purposes as are hereinafter expressed and declared of and concerning the other undivided equal third part or share of and in the said hereditaments. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement in this behalf, and for effectuating the said intended partition, and in consideration of the premises, the said [*trustees*], with the consent, of the said [*tenant for life*], testified by his execution of these presents, in exercise of the power in this behalf given to them by the hereinbefore-recited indenture of settlement, and of every other power and authority enabling them hereunto, hereby absolutely revoke all the uses, trusts, powers, provisoes, and declarations, expressed and declared concerning the one equal third part or share comprised in the hereinbefore-recited indenture of settlement, of and in the hereditaments hereinbefore described, and hereby direct, and appoint, that ALL THAT the same undivided equal third part or share shall henceforth remain, and be to the uses, upon the trusts, and under and subject to the powers, provisoes, and declarations hereinafter expressed concerning the same (that is to say), AS TO the several hereditaments first hereinbefore described, TO THE USE of them the said [*owners in fee*], their heirs and assigns, as tenants in common; AND AS TO the hereditaments secondly hereinbefore described, TO SUCH USES, upon such trusts, and under and subject to such powers, provisoes, and declarations (except the hereinbefore-recited power to make partition), as are expressed and declared in and by the hereinbefore-recited indenture of settlement, concerning the one undivided equal third part or share thereby assured of, and in the hereditaments first and secondly hereinbefore described, or to, upon, under and subject to such of the same uses, trusts, powers, provisoes, and declarations as are now subsisting and capable of taking effect.

Habendum.

Further *testatum.*

Donees of power revoke uses of settlement;

and appoint one undivided third share.

IN WITNESS, &c.

VIII. *CONVEYANCE in pursuance of an* ORDER *of the* COURT *for* EFFECTING *a* PARTITION *by the absolute* OWNER *of* FIVE UNDIVIDED SIXTH PARTS, *and a* MARRIED WOMAN, TENANT FOR LIFE *for her separate use under a* MARRIAGE SETTLEMENT *of the* REMAINING SIXTH, *a* SUM *of* MONEY *being paid for* EQUALITY *of* PARTITION.

THIS INDENTURE (*u*), made the —— day of ——, 18—, BETWEEN [A.], of, &c., of the first part; [B.] the wife of [W.], of, &c., of the second part; [G.], of, &c., and [H.], of, &c., of the third part (*x*); and [*grantee to uses*], of, &c., of the fourth part: WHEREAS, by an indenture of settlement, dated the—— day of ——, 18—, and made between [R.], of the first part; [S.], of the second part; and [O.] and [P.], of the third part (being the settlement executed previously to the marriage of the said [R.] and [S.], the father and mother of the said [A.] and [B.]), the lands and hereditaments hereinafter described, were conveyed and assured unto and to the use of the said [R.] and [S.] successively, during their respective lives, and, after the decease of the survivor of them, to the use of all and every the child and children of the said [R.] and [S.], his, her, and their heirs and assigns, and, if more than one, as tenants in common: AND WHEREAS there were issue of the said marriage six children, namely, the said [A.] and [B.], and four other children, [C.], [D.], [E.], and [F.], who died in their infancy; AND WHEREAS the said [R.] and [S.] are respectively long since deceased; AND WHEREAS the four respective undivided sixth parts or shares of the said [C.], [D.], [E.], and [F.], of and in the hereditaments so settled by the hereinbefore recited indenture, descended, at their respective deceases, to the said [A.], as their eldest brother and heir-at-law; AND WHEREAS, by an indenture of settlement, dated the —— day of ——, 18—, and being made between the

Parties.

Recitals: of settlement;

as to issue of the marriage;

of death of [R.] and [S.];

of the death of four of the children, whose shares descended to [A.];

of settlement affecting the undivided share of one of the parties;

(*u*) As to stamp, see *ante*, p. 157, note (*f*).

(*x*) The trustees are made parties for the purpose of acknowledging the receipt of the money paid to them for equality of partition; if no such payment is made they need not be made parties to the deed, as even an equitable tenant for life can exercise his statutory power of partition (like his other powers under the Settled Land Acts) and pass the legal estate without their concurrence (see sect. 58 (ix.) of the Act of 1882), provided he gives to them and their solicitors due notice of his intention to exercise the power.

VIII. Conveyance on Partition by Court.

said [W.] of the first part; the said [B.], of the second part; and the said [G.] and [H.], of the third part (being the settlement executed previously to the marriage of the said [W.] and [B.]), ALL THAT the one undivided sixth part or share of her the said [B.] of and in the lands and hereditaments comprised in the hereinbefore recited indenture, and hereinafter described, was conveyed unto and to the use of the said [G.] and [H.], their heirs and assigns, in trust for the said [B.] during her life for her separate use, with remainder over; AND WHEREAS, by an order of Her Majesty's High Court of Justice, Chancery Division, dated the —— day of ——, 18—, and made by his lordship, Sir ——, one of the judges of the said Court, in an action in which the said [A.] was plaintiff, and [*defendants*] were defendants, it was ordered that an inquiry be made who were the parties respectively entitled to the premises in the pleadings mentioned, and for what estates and interests respectively, and whether they were respectively parties to the said action, and it was directed that, if it should be certified that all the parties entitled to or interested in the said premises were parties to the said action, then that a partition should be made of the same into as many parts as the same should be certified to be divisible into, and that such shares be allotted to the parties to whom the same should be certified to belong, in such shares and for such estates and interest as should be certified; AND THAT the respective shares, which should be allotted to the several parties, should be held and enjoyed by them respectively in severalty according to such allotments, and to their respective estates and interest therein, and that the parties should execute mutual conveyances to each other according to their respective interests, such conveyances to be settled by the judge in case the parties should differ about the same; AND WHEREAS the chief clerk of the said judge by his certificate, dated the —— day of ——, 18—, and made in the said action, and approved and signed by the said judge on the —— day of ——, 18—, and filed on the same day in the said action, certified that the plaintiff was entitled to five undivided sixth parts or shares in fee simple in the said hereditaments; AND THAT the said defendant [B.] was entitled to the remaining undivided sixth part, with divers remainders over, under the said last hereinbefore recited settlement of the —— day of ——, 18—; AND WHEREAS on the —— day of

of order for partition;

of certificate as to title;

of appointment of surveyor;

VIII. Conveyance on Partition by Court.

——, 18—, [Q.], of, &c., land agent and surveyor, was appointed by the said judge to report upon the best and most proper mode of separating and dividing the lands and hereditaments in question, so as to allot five sixth parts thereof as the share of the said plaintiff, and the remaining sixth part thereof as the share of the said defendant [B.] for her life with remainders over, in order to assist in effecting the partition directed by the said order; And whereas the said [Q.], by his report dated the —— day of ——, 18—, and filed in the said action on the —— day of ——, 18—, certified and reported that the best and most proper mode of separating and dividing the said lands and hereditaments so as to effect such partition as aforesaid, was that all the said lands and hereditaments should be separated into two divisions in manner following, that is to say, that all the lands and hereditaments described in the First Schedule to the said report should be allotted to the said [A.], the plaintiff, and his heirs in severalty, as and for his part or share of the premises in the pleadings mentioned; And that all the lands and hereditaments described in the Second Schedule to the said report, should be allotted unto the said defendant [B.] for her life with remainders over as aforesaid; And for equality of partition between the said respective parties, the said surveyor certified and reported that the said [A.] should pay to the said [G.] and [H.], as the trustees of the hereinbefore recited settlement of the —— day of ——, 18—, the sum of £——; and he moreover certified that he had delineated the said lands in a certain plan to the certificate annexed, wherein the lands allotted to the said [A.], the plaintiff, were marked with a red colour, and the lands allotted to the said defendant [B.] were marked with a green colour; And whereas the said chief clerk by his certificate dated, &c. [*ut supra*], certified that the partition directed to be made by the said order of the —— day of ——, 18—, was to be carried out according to the said report of the said [Q.] (whose assistance in making such partition had been obtained), and the said plan thereto annexed, which report and plan were filed with the certificate now in recital, and that the lands and hereditaments described in the First Schedule to the said report, and coloured red on the said plan, had been allotted to the said [A.] the plaintiff, and that the lands and hereditaments described in the Second Schedule to the said report, and coloured green in the said

of report of surveyor;

of certificate confirming report;

VIII. Conveyance on Partition by Court.

plan, had been allotted to the said defendant [B.], and that the said [A.], the plaintiff, was to pay to the said [G.] and [H.], as such trustees as aforesaid, the sum of £—— for equality of partition; And whereas the several parties hereto of the first three parts are desirous to complete the said partition, and to carry the same into effect in manner hereinafter appearing; And whereas the several deeds and documents of title specified in the Third Schedule hereunder written relate to the lands and hereditaments described in the First Schedule hereunder written, as well as to the lands and hereditaments comprised in the Second Schedule hereunder written, and it has accordingly been agreed that the possession of the same deeds and documents shall be retained by the said [A.], and that he shall enter into such acknowledgment and undertaking with regard to the same as are hereinafter contained; And whereas these presents have been settled by the said judge, as appears by the certificate of his chief clerk, dated the —— day of ——, 18—; And whereas the said [A.], by the direction of the said [B.], has this day paid to the said [G.] and [H.], as the trustees of the hereinbefore recited settlement of the —— day of ——, 18—, the sum of £—— for equality of partition, to be held by them as capital money arising out of the Settled Land Acts, the receipt of which sum the said [G.] and [H.] hereby acknowledge. NOW THIS INDENTURE WITNESSETH that, for effectuating the said partition, and in obedience to the hereinbefore recited order of the —— day of ——, 18—, and in consideration of the premises, the said [A.], as to the five equal undivided sixth parts or shares to which he is so entitled as aforesaid, hereby grants, and, as beneficial owner, conveys; And the said [B.], as to the one remaining equal undivided sixth part or share comprised in the hereinbefore recited indenture of settlement, in exercise of the power in this behalf conferred on her by the Settled Land Act, 1882, and of every other power or authority (if any) her hereunto enabling, hereby appoints and grants, and, as beneficial owner, conveys unto the said [*grantee to uses*] and his heirs, All the several messuages, lands, and hereditaments [*describe parcels by reference to Schedules, ut ante*, p. 154]; To hold the premises unto the said [*grantee to uses*], his heirs and assigns, As to the messuages, lands, and hereditaments described in the First Schedule hereunder written to the use of the said

of desire to complete partition;

of agreement as to title-deeds, &c.;

of conveyance having been settled by the judge;

of payment of money to trustees of settlement for equality of partition.

Testatum.

VIII. Conveyance on Partition by Court.

[A.], his heirs and assigns; AND AS TO the messuages, lands, and hereditaments described in the Second Schedule hereunder written, To SUCH USES, upon such trusts, and under and subject to such powers, provisoes, and declarations as are expressed and declared in and by the hereinbefore recited indenture of settlement concerning the one undivided equal sixth part or share therein comprised of and in the hereditaments hereinbefore described, or to, upon, under, and subject to such of the same uses, trusts, powers, provisoes, and declarations as are now subsisting and capable of taking effect. AND THIS INDENTURE ALSO WITNESSETH that acknowledgment and undertaking as to deeds, *ut ante*, p. 155.

IN WITNESS, &c.

THREE SCHEDULES.

IX. *PARTITION (by separate Deeds) of a* FREEHOLD ESTATE, *which has descended in* FEE-SIMPLE *to* FOUR CO-HEIRESSES, *of whom two are* MARRIED (*before the 1st of January*, 1883), *and the remaining two are unmarried; one of the married Heiresses has* SETTLED *her Share, one of the unmarried Heiresses has* MORTGAGED *her Share, and the other has* SOLD *hers.*

[A.] CONVEYANCE *and* APPOINTMENT *of a divided fourth Part of the Lands held in Coparcenary, to one of the* MARRIED CO-HEIRESSES *in* FEE.

THIS INDENTURE (*y*), made the —— day of ——, 18—, BETWEEN [M.], of, &c., and [A.] his wife, of the first part; [N.], of, &c., and [B.], his wife, of the second part; [X.], of, &c., and [Y.], of, &c. (trustees of the settlement made on the Parties (*z*).

(*y*) This, being the principal deed whereby the partition is effected, will be liable to a stamp of 10*s.*, and also to *ad valorem* duty on the aggregate amount of the sums paid for equality of partition.

(*z*) If the marriages had taken place ,or the title had accrued after 1882, the concurrence of the husband would not have been required.

This and the other deeds will require acknowledgment by [A.] As to acknowledgment of conveyances by a *feme coverte* tenant for life, exercising her statutory powers with her husband's concurrence, see *ante*, Vol. I., p. 212.

IX. Partition by Separate Deeds.

marriage of said [N.] and [B.]), of the third part; [C.], of, &c., spinster, and [*mortgagee*], of, &c., of the fourth part; [D.], of, &c., spinster, and [*purchaser*], of, &c., of the fifth part; and [*grantee to uses*], of, &c., of the sixth part.

Recital of death of ancestor;

WHEREAS [*ancestor*], late of ——, died on or about the —— day of ——, 18—, intestate, being at the time of his decease,

seisin;

seised of the lands hereinafter described, together with other lands in fee-simple, in possession, and leaving the said [A.],

heirship;

[B.], [C.], and [D.], his only surviving children and issue, his coheiresses-at-law; AND WHEREAS on the —— day of ——,

of settlement of another share;

18—, the said [A.] intermarried with the said [M.]; AND WHEREAS, by an indenture of settlement, dated the —— day of ——, 18—, and made between the said [B.], of the first part, the said [N.], of the second part, and the said [X.] and [Y.], of the third part [being a settlement executed previously to the marriage of the said [N.] and [B.], which was shortly afterwards solemnized], the undivided fourth part or share of the said [B.], of and in the hereditaments whereof the said [*ancestor*] so died seised as aforesaid, was limited or settled to the uses and upon the trusts in the said indenture of settlement expressed, whereby the said [B.] is tenant for life in possession of the same part or share, with divers remainders over, and the said [X.] and [Y.] are the trustees with power of sale of the settled lands comprised in

of mortgage of another share;

the indenture now in recital; AND WHEREAS, by an indenture of mortgage, dated the —— day of ——, and made between the said [C.], of the one part, and the said [*mortgagee*], of the other part, the undivided fifth part or share of the said [C.], of and in the hereditaments whereof the said [*ancestor*] so died seised as aforesaid, was conveyed to the use of the said [*mortgagee*], his heirs and assigns, by way of mortgage, for securing the sum of £—— and interest, which principal sum of £—— is still due upon

of contract for sale of remaining share;

such mortgage security; AND WHEREAS the said [*purchaser*] recently contracted for the absolute purchase of the undivided part or share of the said [D.], of and in the hereditaments

of agreement for partition;

whereof the said [*ancestor*] so died seised as aforesaid; AND WHEREAS it has been agreed between the parties hereto, that partition shall be made of the hereditaments whereof the said [*ancestor*] so died seised as aforesaid, and that the hereditaments hereinafter described shall belong to the said [A.] in severalty, as and for her share thereof, and shall be conveyed

IX. Partition by Separate Deeds.

to her in manner hereinafter appearing; AND WHEREAS, upon the treaty for the said partition, it was agreed that the said [A.], taking the hereditaments hereinafter described in severalty as aforesaid, should pay for equality of partition the several sums to the persons hereinafter mentioned, that is to say: the sum of £2,000 to the said [X.] and [Y.], as trustees of the settlement created by the said indenture of the —— day of ——, 18—, and the sum of £1,000 to the said [*mortgagee*], in part payment of his said mortgage debt; and the sum of £500 to the said [*purchaser*]: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement for partition of the hereditaments aforesaid, as to the fourth undivided part or share of and in the hereditaments whereof the said [*ancestor*] was so seised as aforesaid, to which the said [A.] is so entitled as aforesaid, she the said [A.], hereby grants, and as beneficial owner conveys, and the said [M.] hereby grants and confirms, and as beneficial owner conveys; And as to the fourth part or share in the same hereditaments to which the said [B.] is entitled as such tenant for life as aforesaid, in consideration of the sum of £2,000 now paid for equality of exchange by the said [A.], by the direction of the said [N.] and [B.], to the said [X.] and [Y.], as such trustees of the settlement as aforesaid, the payment and receipt whereof the said [N.] and [B.], and also the said [X.] and [Y.] hereby acknowledge, the said [N.] and [B.], in exercise of the power in this behalf vested in them under or by virtue of the Settled Land Act, 1882, and of every other power (if any) them or either of them hereunto enabling, hereby appoint and as beneficial owners convey; And as to the fourth undivided part or share comprised in the said indenture of mortgage, and to which the said [C.] is entitled subject thereto, in consideration of the sum of £1,000 now paid by the said [A.] by the direction of the said [C.] to the said [*mortgagee*], in part payment of the said mortgage debt, the payment and receipt whereof the said [C.] and [*mortgagee*] hereby respectively acknowledge, the said [*mortgagee*], at the request of the said [C.] hereby grants and as mortgagee conveys, and the said [C.] hereby grants and confirms, and as beneficial owner conveys; And as to the fourth undivided part or share of the said [D.], of and in the same hereditaments so contracted to be purchased by the said [*purchaser*]

of agreement for payment of equality money.

Testatum.

Conveyance to grantee.

IX. Partition by Separate Deeds.

as aforesaid, in consideration of the sum of £500 now paid by the said [A.] by the direction of the said [D.], to the said [*purchaser*], the payment and receipt whereof the said [D.] and [*purchaser*] hereby acknowledge, the said [D.], by the direction of the said [*purchaser*], hereby grants, and as beneficial owner conveys, and the said [*purchaser*] hereby confirms unto the said [*grantee to uses*] and his heirs, ALL THOSE [*describe parcels allotted to A.*], TO HOLD the premises unto the said [*grantee to uses*] and his heirs, TO SUCH USES, upon such trusts, in such parts or shares, and with, under, and subject to such powers, provisoes, and conditions, as the said [A.], notwithstanding coverture, shall, by deed or will, appoint, and in default of or subject to any such appointment, TO THE USE of the said [A.], her heirs and assigns.

Habendum, to uses as [A.] shall appoint with remainder to use of [A.] in fee.

IN WITNESS, &c.

[B.] *CONVEYANCE of another divided Fourth Part of the Lands held in Coparcenary, to the* USES *of the* MARRIAGE SETTLEMENT *of another Co-heiress.*

THIS INDENTURE (*y*), made the —— day of ——, BETWEEN [N.], of, &c., and [B.] his wife, of the first part; [X.] and [Y.], of, &c. (trustees of the settlement made on the marriage of said [N.] and [B.]), of the second part; [M.], of, &c., and [A.] his wife, of the third part; [C.], of, &c., spinster, and [*mortgagee*], of, &c., of the fourth part; [D.], of, &c., spinster, and [*purchaser*], of, &c., of the fifth part; and [*grantee to uses*], of, &c., of the sixth part: WHEREAS (*recite seisin and death of ancestor, heirship, death, and will of deceased co-heiress, settlement on the marriage of* [B.], *mortgage by* [C.], *and contract for sale by* [D.], *ut ante*, p. 182). AND WHEREAS it has been agreed between the parties hereto, that a partition shall be made of the hereditaments whereof the said [*ancestor*] so died seised as aforesaid, and that the hereditaments hereinafter described shall be conveyed and assured in manner hereinafter contained, as and for the full and complete share of the said [B.] of and in the hereditaments whereof the said [*ancestor*] so died seised as aforesaid: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, &c. (*ut ante*, p. 183), TO HAVE AND TO

Parties.

Recitals.

Testatum.

Conveyance to grantee.

Habendum, to uses of settlement.

(*y*) Stamp, 10*s.*

HOLD all and singular the hereditaments and premises hereinbefore described, and hereby assured, unto the said [*grantee to uses*] and his heirs, To THE USES, upon the trusts, and with, under, and subject to the powers, provisoes, and declarations, in and by the above-recited indenture of settlement of the —— day of —— contained and declared concerning the undivided fifth part or share of the said [B.] of and in the hereditaments whereof the said [*ancestor*] so died seised as aforesaid, or such of them as are now subsisting or capable of taking effect.

IN WITNESS, &c.

[C.] *CONVEYANCE and Appointment of another divided Fourth Part of the Lands held in Coparcenary, to the* USES *and upon the* TRUSTS *limited and declared in a prior* MORTGAGE-DEED *concerning the undivided Share of another Co-heiress* (*z*).

THIS INDENTURE, made the —— day of ——, BETWEEN [C.], of, &c., spinster, of the first part; [M.], of, &c., and [A.] his wife, of the second part; [N.], of, &c., and [B.] his wife, of the third part; [X.], of, &c., and [Y.], of, &c. (trustees of the settlement made on the marriage of the said N.] and [B.]), of the fourth part; [D.], of, &c., spinster, and [*purchaser*], of, &c., of the fifth part; and [*mortgagee*], of, &c., of the sixth part (*a*). WHEREAS [*recitals as in the former precedents*]. AND WHEREAS it has been agreed between the parties hereto, that partition shall be made of the heredita-

Parties.

Recitals

(*z*) The conveyance may be made, as in the former precedents, to a grantee to uses, in which case the mortgagee will be a party (with the mortgagor) of the first part, and will join in the granting part. It is unimportant which mode of framing the conveyance is adopted. The deed, it is conceived, will only require the common stamp upon a partition.

(*a*) It is assumed, either that the day of redemption named in the mortgage-deed has passed, or that that deed contains the usual proviso for the *reconveyance* of the mortgaged estate to the mortgagor on payment of the principal and interest, and not a proviso for making the conveyance to the mortgagee *void* on such payment: otherwise, it will be proper to make the present conveyance to the use of the mortgagee, &c., with a proviso for reconveyance to the mortgagor, and all the clauses usually inserted in a mortgage-deed. This variation in the form of the deed does not seem to render it liable to any further stamp-duty.

IX. Partition by Separate Deeds.

ments whereof the said [*ancestor*] so died seised as aforesaid; and that the hereditaments hereinafter devised shall belong to the said [C.] in severalty as and for her share thereof, and shall be conveyed and assured in manner hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, &c. (*ut ante*, p. 183), To HOLD all and singular the hereditaments and premises hereinbefore described, and hereby assured, unto the said [*mortgagee*] and his heirs for ever, To THE USES, upon the trusts, and with, under, and subject to the powers, provisoes, declarations, and agreements in and by the above-recited indenture of mortgage of the —— day of ——, 18—, declared, and contained of and concerning the undivided fifth part or share of the said [C.] of and in the hereditaments whereof the said [*ancestor*] so died seised as aforesaid, and such of them as are now subsisting or capable of taking effect.

Testatum.

Conveyance to mortgagee.

Habendum.

IN WITNESS, &c.

[D.] *CONVEYANCE and Appointment of another divided Fourth Part of the Lands held in Coparcenary to a* PURCHASER *of the undivided Share of another Co-heiress.*

THIS INDENTURE (*b*), made the —— day of ——, BETWEEN [D.], of, &c., spinster, of the first part; [M.], of, &c., and [A.] his wife, of the second part; [N.], of, &c., and [B.] his wife, of the third part; [X.], of, &c., and [Y.], of, &c. (trustees of the settlement made on the marriage of the said [N.] and [B.]), of the fourth part; [C.], of, &c., spinster, and [*mortgagee*], of, &c., of the fifth part; and [*purchaser*], of, &c., of the sixth part.

Parties.

WHEREAS [*recitals as in the former precedents*]. AND WHEREAS it has been agreed between the parties hereto, that partition shall be made of the hereditaments whereof the said [*ancestor*] so died seised as aforesaid; and that the hereditaments hereinafter described shall be conveyed and assured in severalty in manner hereinafter contained, as and for the full and complete share of the said [D.] of and in the hereditaments whereof the said [*ancestor*] so died seised as aforesaid.

Recitals.

(*b*) Stamp, 10*s*.

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, &c. (*ut ante*, p. 183), To HOLD the premises hereinbefore described, and expressed to be hereby conveyed UNTO AND TO THE USE of the said [*purchaser*], his heirs, and assigns for ever.

IX. Partition by Separate Deeds.

Testatum.

Conveyance to purchaser.

X. *CONVEYANCE of* FREEHOLDS *by two* JOINT TENANTS *to a third Person in trust to make a* PARTITION, *and convey the* RESPECTIVE ALLOTMENTS *to the several Share-Owners.*

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN [A. B.], of, &c., of the first part; [C. B.], of, &c., of the second part; and [*trustee*], of, &c., of the third part: WHEREAS, by an indenture dated the —— of ——, 18—, and made between [S.], of the first part; [T.], of the second part; the said [A. B.], of the third part; and the said [C. B.], of the fourth part; All and singular the closes, pieces, or parcels of land and hereditaments hereinafter described, and hereby appointed or intended so to be, were, for the pecuniary considerations therein mentioned, conveyed and assured, and now stand limited to the use of the said [A. B.] and [C. B.], their heirs and assigns: AND WHEREAS the said [A. B.] and [C. B.] have agreed upon a partition of the said closes of land and hereditaments, and they have requested the said [*trustee*] to make a fair and equal partition and division of the same accordingly, and they have moreover agreed to limit and assure the same hereditaments to the uses hereinafter expressed, in order that the said [*trustee*] may convey the several allotments, into which the same shall be divided by him as aforesaid, unto or for the benefit of the said [A. B.] and [C. B.] respectively, as they respectively shall direct, to the intent that the same allotments respectively may be taken and enjoyed by the said respective parties in severalty. NOW THIS INDENTURE WITNESSETH that, for the purpose of carrying the above-recited intention into effect, and in consideration of the premises, the said [A. B.] and [C. B.] hereby jointly grant, and, as beneficial owners, convey unto

Parties.

Recital of conveyance vesting property in partitioners;

of intention to make partition and conveyance.

Testatum.

Conveyance to trustee.

X. Conveyance to Trustee to Make Partition.

the said [*trustee*] and his heirs; ALL THOSE [*describe parcels*]; TO HOLD the same unto the said [*trustee*] and his heirs, TO SUCH USES, upon such trusts, and for such intents and purposes, as the said [*trustee*], in the exercise and execution of the several trusts, powers, and authorities hereinafter expressed and contained, shall by deed or deeds appoint; And, in default of such appointment to uses, and upon and for such trusts, intents, and purposes, as the said closes of land and hereditaments were and stood limited and subject to immediately before the execution of these presents (*b*):

Power for trustee to make partition.

PROVIDED ALWAYS, and it is hereby declared and agreed, that, immediately, or as soon as conveniently may be, after the execution of these presents, it shall be lawful for the said [*trustee*] to enter into and upon the closes, pieces, or parcels of land and hereditaments hereby conveyed in order to take an admeasurement and survey thereof, and to do and execute all such other matters and things as shall be necessary for the ascertaining of the value of such closes of land and hereditaments, and, in the absolute discretion of the said [*trustee*], to make a fair and equal partition and division of the same into two allotments, according to such ascertained value thereof; AND when and as soon as the said [*trustee*] shall have divided and allotted the said closes of land and hereditaments hereby conveyed into two equal allotments or portions as aforesaid, then that it shall be lawful for the said [*trustee*], without any further consent on the part of the said [A. B.] and [C. B.] respectively, or their respective heirs or assigns, and notwithstanding their dissent or non-concurrence, to convey and assure one of the allotments or portions, into which the said closes of land shall be divided as aforesaid, unto or for the benefit of the said [A. B.], his heirs or assigns, in such manner as he or they shall direct, and also to convey and assure the other of the said allotments or portion unto or for the benefit of the said [C. B.], his heirs or assigns, in such

(*b*) The adoption of limitations similar to those in the text, in such a case as the present, seems to be well adapted to answer the objects of the parties, enabling the trustee to give effect to his partition by conveying the fee-simple to the respective parties, but reviving the old limitations in the event of his dying without exercising the power, thereby avoiding the inconvenience which might result from the event of the legal estate descending to the heir of the trustee.

X. Conveyance to Trustee to Make Partition.

manner as he or they shall direct, to the intent that the said several allotments or portions into which the closes of land and hereditaments hereby conveyed, shall be divided or allotted as aforesaid, may thenceforth be held and enjoyed by the said [A. B.] and [C. B.] respectively, and their respective heirs and assigns, in severalty, in lieu of and in full satisfaction for the respective undivided moieties of them the said [A. B.] and [C. B.] in the same closes of land and hereditaments: PROVIDED ALSO, and it is hereby agreed and declared by and between the said [A. B.] and [C. B.], that the partition and division, conveyance and assurance, to be made by the said [*trustee*], as aforesaid, shall be binding and conclusive on them the said [A. B.] and [C. B.] respectively, and their respective heirs and assigns, and shall not on any account be impeached or impeachable by either of them, or the heirs or assigns of either of them; AND FURTHER, that the partition and division to be made by the said [*trustee*] as aforesaid shall not be in anywise avoided, defeated, or disturbed, in consequence of the eviction, by title paramount or otherwise, of either of the said parties hereto, or any persons or person claiming under either of them respectively, from the hereditaments to be conveyed or assured to such party by the said [*trustee*], nor shall the title of either of the said parties, or of any person or persons claiming under him, respectively, to the hereditaments to be conveyed or assured to him respectively by the said [*trustee*] as aforesaid, depend upon the title of the other of the said parties, or his heirs, to the hereditaments to be conveyed and assured to the other of the said parties by the said [*trustee*] as aforesaid; AND each of them the said [A. B.] and [C. B.] hereby covenants with the other of them, that in case he the said [A. B.] or [C. B.] shall impede, interrupt, or hinder, or attempt to impede, interrupt, or hinder the said [*trustee*] in the execution and performance of any of the several trusts, powers, and authorities hereby vested in the said [*trustee*], then, and immediately thereupon, the said [A. B.] or [C. B.], as the case may be, his heirs, executors, or administrators, will pay to the other of them, his executors or administrators, the sum of £500 as and for liquidated damages, and not in the nature of a penalty; AND lastly, it is hereby agreed and declared, that the costs, charges, and expenses of and attending the survey, partition, and division so intended to be made by the said [*trustee*] as afore-

Partition and conveyance shall be binding on the parties.

And that the title to one allotment shall not be dependent upon the title to the other.

Covenant by each to pay £500 for liquidated damages in case of the covenantor interrupting trustee.

Costs of partition to be borne equally.

X. Conveyance to Trustee to Make Partition.

said, and of and attending the execution of the several trusts, powers, and authorities hereby reposed in him, shall be paid and borne by the said [A. B.] and [C. B.] in equal moieties.

In witness, &c.

XI. *DEED of* Appointment, *in* pursuance *of the* Power *vested in the* Person empowered *to make* Partition *by the last Deed,* conveying *the several* Allotments *to the respective* Owners *of the* Undivided Shares. (*Indorsed on last Deed.*)

THIS INDENTURE (*c*), made the —— day of ——, 18—,

Parties.

Between the within-named [*trustee*], of the first part; the within-named [A.B.], of the second part; and the within-named [C.B.], of the third part:

Recitals.

Whereas, shortly after the date and execution of the within-written indenture, the said [*trustee*], in execution of the power and authority in that behalf contained in the within-written indenture, proceeded to take an admeasurement and survey of the several closes of land and hereditaments, whereof a partition and division were to be made by him as expressed in the within-written indenture, in order to ascertain the value thereof, and he then, to the best of his judgment and ability, made a fair and equal partition and division of the same into two lots or portions, according to the ascertained value thereof; and the said [*trustee*], in the further execution of the powers and authorities aforesaid, allotted and awarded all and singular the several closes of land and hereditaments comprised in the First Schedule to these presents, unto the said [A.B.], in lieu of, and in satisfaction for, his undivided moiety or equal half part of and in the closes of land and hereditaments conveyed by the within-written indenture; and the said [*trustee*] awarded and allotted the residue of the said closes of land (being the hereditaments comprised in the Second Schedule to these presents), unto the said [C.B.], in lieu of, and in full satisfaction for, the undivided moiety or equal half part of the said [C.B.] of and in the several closes of land conveyed by the said

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(*c*) Stamp, 10*s*.

within-written indenture: NOW THIS INDENTURE WITNESSETH, that, in and for giving effect to the partition and division made by him as aforesaid, and in consideration of the premises, the said [*trustee*], in exercise of the power given to him in that behalf by the within-written indenture, and of all other powers and authorities enabling him thereunto, hereby appoints that ALL AND SINGULAR the closes of land and hereditaments comprised in the within-written indenture, and described in the First and Second Schedules to these presents, shall henceforth remain and be, and he hereby, as trustee, conveys the same, to the uses, upon the trusts, and for the intents and purposes hereinafter expressed and declared concerning the same (that is to say): AS TO such of the same hereditaments and premises as are described in the First Schedule hereunder written, TO THE USE of the said [A. B.], his heirs and assigns; AND AS TO such of the same hereditaments and premises as are described in the Second Schedule hereunder written; TO THE USE of the said [C.B.], his heirs and assigns.

XI. **Appointment under Power in last Deed.**

Testatum.

For effectuating partition, donee of power appoints the lands.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

XII. *ASSIGNMENT OF LEASEHOLDS by* Two TENANTS IN COMMON *to a* TRUSTEE *for* PARTITION.

THIS INDENTURE (*d*), made the —— day of ——, 18—, BETWEEN [A. B.] of the first part, [C. D.] of the second part, and [*trustee*] of the third part. [*Recite leases to testator, his will bequeathing leasehold premises to* [A. B.] *and* [C. D.] *as tenants in common, his death and probate of his will in the usual manner.*] AND WHEREAS [A. B.] and [C. D.] have agreed upon a partition of the said leasehold premises. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in considera-

Parties.

Recitals.

Testatum.

Assignment of leaseholds to trustee.

(*d*) Stamp, 10*s.* and *ad valorem*, as on a conveyance by way of sale in respect of the equality money if exceeding £100.

XII. Assignment of Leaseholds to Trustee for Partition.

tion of the sum of £——, now paid by the said [A. B.] to the said [C. D.] for equality of partition (the receipt whereof the said [C. D.] hereby acknowledges), each of them the said [A. B.] and [C. D.] according to their respective estate and interest therein, hereby assign, and as beneficial owners convey, ALL THE said premises comprised in the hereinbefore recited leases respectively unto the said trustee, To HOLD the same subject to the rent, covenants and conditions by and in the said lease [*or* leases respectively], reserved and contained, and on the part of the lessees to be paid, observed, and performed respectively, UPON TRUST, forthwith to assign such parts of the same premises as are described in the First Schedule, hereunder written unto the said [A. B.], his executors, administrators, and assigns, and such parts thereof as are described in the Second Schedule hereunder written unto the said [C. D.], his executors, administrators, and assigns.

Habendum.

Trust to assign.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

XIII. *ASSIGNMENT under the Last Precedent to one of the* PARTITIONERS.

THIS INDENTURE (*e*), made the —— day of ——, 18—, BETWEEN [A. B.] of the first part, [C. D.] of the second part, and [*trustee*] of the third part; AND SUPPLEMENTAL to an indenture of even date herewith, and expressed to be made between the same parties as are parties hereto and in the same order, WITNESSETH that the said [*trustee*] in performance of the trusts of the principal indenture, hereby assigns and as trustee conveys unto the said [A. B.] ALL AND SINGULAR the messuage and lands described in the Schedule hereunder written: To HOLD the same unto the said [A. B.], his executors, administrators and assigns, for the residue now unexpired for the term of —— years therein granted by the

Parties.

Testatum.

Assignment.

(*e*) Stamp, 10*s*.

indenture of lease, dated the —— day of ——, 18—, recited in the principal indenture subject to the rent, covenants, and conditions by and in the same lease reserved and contained and by the lessee to be paid, performed and observed: And the said [A. B.] hereby acknowledges the right of the said [C. D.] to production of the said lease and also of the principal indenture, and to delivery of copies thereof respectively, undertakes for the said custody thereof.

XIII. Assignment under Power in last Deed.

Acknowledgment of right to production of lease.

In witness, &c.

Note.—For an Agreement for Partition, see Vol. I., p. 508, under title Agreements.

PARTNERSHIPS AND COMPANIES.

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1. Of the Formation and Nature of a Partnership.

What is a Partnership.

Definitions of partnership.

Partnership, according to Puffendorf, lib. 5, cap. 8, "*contractus societatis est quo duo pluresve inter se pecuniam, res, aut operas conferunt, eo fine, ut quod inde redit lucri inter singulos pro ratâ dividatur—nec minus si quid proveniat damni, a singulis pro ratâ feratur.*" Where two or more contribute money, goods, or labour, intending that the resulting profit or loss shall fall to each rateably (*a*). This definition, although not perfect, gives the main characteristics of a partnership, and is typical as being one of the earliest of many which have been given by eminent writers on jurisprudence (*a*). In the case of *Mollwo, March & Co.* v. *Court of Wards*, L. R. 4 P. C., at p. 436, it was laid down that "to constitute a partnership, the parties must have agreed to carry on business and to share profits in some way in common." And *Jessel*, M. R., in *Pooley* v. *Driver*, 5 Ch. D. 458, while refusing to define a partnership, says, "There could not be a partnership without there was a commercial business to be carried on with a view to profit and for division of profits:" see at p. 472.

No definition of a partnership has yet been given by the Legislature, but in a Bill recently introduced into Parliament (*b*), a definition is given which, it is believed, contains all its essential characteristics.

(*a*) See Lindley on Partnership, p. 2, where fifteen definitions are collected. Some of them are criticised by the late Master of the Rolls, in *Pooley* v. *Driver*, 5 Ch. D. 458.

(*b*) Intituled "A Bill to Consolidate and Amend the Law of Partnerships." This Bill was drafted by Mr. Frederick Pollock, and most of its provisions are taken from the "general propositions" stated in his able "Digest of the Law of Partnership."

What is a Partnership.

It runs thus: "Partnership is the relation which subsists between persons who have agreed to share the profits of a business carried on by all or any of them on behalf of all of them:" see sect. 6, subsect. 1, of the Bill.

Numbers of partners.

At Common Law there was no limit to the number of persons who might have associated themselves together as members of a partnership or firm. But by sect. 4 of the Companies Act, 1862 (25 & 26 Vict. c. 89), it is enacted that—

Prohibition of partnerships exceeding certain number.

"No company, association, or partnership consisting of more than ten persons shall be formed after the commencement of this Act, for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament or letters patent; and no other company, association, or partnership consisting of more than twenty persons shall be formed after the commencement of this Act, for the purpose of carrying on any other business which has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a company engaged in working mines within and subject to the jurisdiction of the Stannaries."

An agreement made in contravention of this enactment is absolutely void: *Re Padstow Association*, 20 Ch. D. 137; *Shaw* v. *Benson*, 11 Q. B. D. 563. And a person with notice that this enactment is being infringed, cannot recover for professional services as solicitor or otherwise in forming or carrying on such an association: *Re S. Wales Atlantic Steamship Co.*, 2 Ch. D. 763.

The dominant ideas in the legal notion of partnership therefore seem to be contract, business carried on with a view to profit, and participation in profit (if any) made in such business.

It may be observed that partnership liability may in some cases be incurred, although no contract of partnership has been entered into. In such cases, the relation arises which is known as quasi-partnership, but which is, in fact, no partnership at all, and is properly excluded from all definitions of partnership.

What is a Partnership.

The contract of partnership, like other contracts, is the result of agreement between the parties. This agreement may be made by deed, or by writing not under seal, or, in the generality of cases (see *infra*), by parol, provided that it appears that the intention of the parties was to enter into the relation of partnership, and to acquire the rights and incur the liabilities of partners: *Barlie* v. *Scott*, 1 H. & Tw. 63; *Mollwo, March & Co.* v. *Court of Wards*, L. R. 4 P. C. 419; *Ross* v. *Parkyns*, L. R. 20 Eq. 331; *Pooley* v. *Driver*, 5 Ch. D. 458; *Ex parte Tennant*, 6 Ch. D. 303; *Walker* v. *Hirsch*, 27 Ch. D. 460.

The contract of partnership.

Cox v. *Hickman.*

In order to show that there is an intention to enter into the relation of partnership, it is not sufficient to show that it has been agreed that the alleged partner shall receive a share of profits, or a payment contingent upon or varying with the profits; but it must further be shown that there is such a participation of profits as to constitute the relation of principal and agent between the person taking the profits and those actually carrying on the business. This rule was first laid down in *Cox* v. *Hickman*, 8 H. L. C. 268, and is now well established by numerous subsequent decisions: see *Kilshaw* v. *Jukes*, 3 B. & Sm. 847; *Re English and Irish, &c. Ass. Soc.*, 1 H. & M. 85; *Wilson* v. *Whitehead*, 10 M. & W. 503; *Bullen* v. *Sharp*, L. R. 1 C. P. 86; *Holme* v. *Hammond*, L. R. 7 Ex. 218. But though participation in profits is not now conclusive evidence of the existence of a partnership, it is one of the circumstances, and a very strong one, which are to be taken into consideration for the purpose of seeing whether or not a partnership exists: per *Cotton*, L. J., in *Ex parte Tennant*, 6 Ch. D., at p. 315.

Intention of parties.

Whether a contract of partnership exists or not depends upon the intention of the parties to be proved, or implied from the whole circumstances of the case (*c*), which may be proved by parol evidence:

(*c*) The question of the existence of a partnership is one of mixed law and fact, that is, of the application of certain rules of law according to the proved circumstances of the case: see *Fox* v. *Clifton*, 9 Bing. 117.

What is a Partnership.

Peacock v. *Peacock*, 16 Ves. 49; *Norton* v. *Seymour*, 3 C. B. 792; *Smith* v. *Sherwood*, 10 Jur. 214; *M'Kay* v. *Rutherford*, 13 Jur. 21. If upon the whole facts of the case the Court is satisfied that it was the intention of the parties to enter into a contract of partnership, a declaration or proviso in an agreement that a partnership shall not be created will be inoperative: *Stocker* v. *Brocklebank*, 3 Mac. & G. 250; *Pooley* v. *Driver*, 5 Ch. D. 458; *Ex parte Delhasse*, 7 Ch. D. 511.

Partnership by parol.

It follows from what has been said that no special formalities are requisite to the contract of partnership. "A partnership, the terms of which have been settled by parol, is as good as one the terms of which have been settled by writing:" per *Romilly*, M. R., in *Essex* v. *Essex*, 20 Beav. 442. But the contract must be complete, and not merely inchoate, and the parties will not be bound where the agreement is still in draft, or subject to a formal instrument being drawn, unless the draft or informal memorandum has been acted upon: *Worts* v. *Pern*, 3 Br. P. C. 548. And an action cannot be maintained for breach of a verbal contract for a partnership unless the terms of the contract can be proved; *Figes* v. *Cutler*, 3 Stark. 139. It may be shown that the partnership commenced before the execution of the articles: *Battley* v. *Bailey*, 1 Sc. N. R. 143. But an advance of money in contemplation of a partnership agreed on, but not finally constituted, does not render the person so advancing the money a partner: *Gabriel* v. *Evill*, 9 M. & W. 297; *Ex parte Turquand*, 2 M. D. & De G. 339.

Statute of Frauds.

The Fourth Section of the Statute of Frauds (29 Car. 2, c. 3) enacts:—

"No action shall be brought . . . . to charge any person . . . upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them; or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith or some other person thereunto by him lawfully authorised."

What is a Partnership.

The general operation and requirements of this enactment have been already considered at length, *ante*, sub. tit., AGREEMENTS, Vol. I., pp. 272, *et seq.*; its application to contracts of partnership will be here briefly considered.

Partnership in land.

Parol partnerships for sharing the profit and loss arising from dealings in land, or the produce of land, have been upheld in several cases. So in *Foster* v. *Hale*, 5 Ves. 308, it was held that a parol agreement for carrying on the business of a leasehold colliery in partnership, was not within the mischief of the Statute of Frauds, the land being necessary for the purposes of the business, and the lease being merely an incident. And in *Dale* v. *Hamilton* (5 Ha. 369), it was held by *Wigram*, V.-C., that a partnership for the purpose of buying and selling land might be proved by parol; but Lord *Cottenham*, C., in the same case, grounded his decision, affirming the judgment of the Vice-Chancellor (*S. C.*, 2 Ph. 266), on the consideration that in that case there was a written and signed memorandum amounting to a sufficient declaration of trust within the 7th section of the statute: see *Essex* v. *Essex*, 20 Beav. 442. On the other hand, when two persons agreed to become partners in a colliery for the purpose of demising it upon royalties to be divided between them, *Lord Cranworth*, C., held that this was an agreement for acquiring an interest in land, and that the Statute of Frauds applied: *Caddick* v. *Skidmore*, 2 De G. & J. 52.

Agreement not to be performed within a year.

The requirements of the Statute must be complied with, both where persons agree to become partners at a future date more than a year from the date of the agreement, and also where the agreement is for a present partnership for a fixed period exceeding a year: *Williams* v. *Jones*, 5 B. & C. 108. But it has been held that the mere fact that the undertaking for which the partnership is formed is not capable of being completed within the year, is not sufficient to exclude parol evidence of the fact of partnership: *M'Kay* v. *Rutherford*, 13 Jur. 21.

Part performance

Where an agreement for a partnership has been acted upon by the partners, as in other cases of

What is a Partnership.

part-performance, the statute does not apply: *Cowell* v. *Watts*, 2 H. & Tw. 224; *Baxter* v. *West*, 1 Dr. & Sm. 173; *Burdon* v. *Barkus*, 4 De G. F. & J. 47; *Williams* v. *Williams*, L. R. 2 Ch. 294.

Variation of articles by conduct of partners.

Where there is a written agreement for a partnership, the business is conducted presumably on the terms of such agreement. This presumption, however, may be rebutted according to the principle, *modus et conventio viacunt legem*, by showing that the written articles have been varied by a course of dealing acquiesced in by the partners, and thus showing that they have all agreed to change the terms of the original written contract: *Const* v. *Harris*, 1 T. & R. 496; see also *Jackson* v. *Sedgwick*, 1 Sw. 460; *Pettit* v. *Jameson*, 6 Madd. 146; *Simmons* v. *Leonard*, 3 Ha. 581; *Lawes* v. *Lawes*, 9 Ch. D. 98. If the construction of the written articles is doubtful parol evidence is admissible to show what was the uniform practice of the firm: *Ex parte Barber*, L. R. 5 Ch. 687. In *Coventry* v. *Barclay*, 3 De G. J. & S. 320, Lord *Westbury* says: "If the usage be not strictly in accordance with the written articles, it becomes evidence of a new agreement by the partners, and is as binding as if it had originally been clearly prescribed by the articles."

Admissions as to existence of partnership.

An admission (*d*) by a person that he is a partner is evidence of a partnership as against himself, and will support other evidence to prove the existence of a partnership: *Norton* v. *Seymour*, 3 C. B. 792; *Lawler* v. *Kershaw*, Moo. & M. 93; *Sangster* v. *Mazarredo*, 1 Stark 161; but such an admission is not conclusive, and does not estop the party who makes it; *Ridgway* v. *Philip*, 1 Cr. M. & R. 415; even though the admission be contained in a deed: *Radcliffe* v. *Rushworth*, 33 Beav. 485;

Admissions.

(*d*) Admissions of the kind spoken of here are to be distinguished from those made by persons who are already proved to be partners. The rule that the admission of one partner binds the rest is founded on a different principle—that of agency, and cannot apply until the parties are shown to be partners: *Catt* v. *Howard*, 3 Stark. 3; or, if they are partners, to a transaction anterior to the commencement of the partnership: *Tunley* v. *Evans*, 2 D. & L. 747.

What is a Partnership.

still less, if such an admission was not a necessary part of the deed, and the person who executed it can show he did not know that the deed contained such an admission: *Empson's case,* L. R. 9 Eq. 597.

An admission is only *primâ facie* evidence of a partnership, and may be shown to have been made through a mistaken supposition: *Vice* v. *Anson,* 7 B. & C. 409, Moo. & M. 98 (*e*); or with reference to a particular, or different transaction: *De Berkom* v. *Smith,* 1 Esp. 29.

An admission on oath in an affidavit in a previous action is conclusive evidence against the party who made it: *Studdy* v. *Saunders,* 2 D. & R. 347: *Battley* v. *Bailey,* 1 Sc., N. R. 143; *S. C.,* 1 M. & Gr. 155; but such an admission cannot be used against the other alleged partners: *Sangster* v. *Mazarredo,* 1 Stark. 161.

Partnership continued after expiration of term.

Where a partnership is entered into for a fixed term of years, and the partners continue to carry on the business after the expiration of the term, a new agreement will be deemed to have been impliedly made between the partners, and it will be presumed that they intended to become partners at will (*f*) on all the terms of the articles, so far as applicable to a partnership at will. Important questions sometimes arise as to what terms are or are not so applicable; but, as a general rule, the Court will regard the continuing partnership as varied only as to the term of its duration, and uphold all the other stipulations of the original agreement: *Essex* v. *Essex,* 20 Beav. at p. 450; see *Booth* v *Parkes,* 1 Mol. 465. The rule will apply where surviving partners continue the business of the original firm: *King* v. *Chuck,* 17 Beav. 325. A clause providing that on the death of a partner before the expiration of the term, the survivor shall purchase the share of the deceased partner at a specified price, is applicable to a partnership continued after the

(*e*) This case is so explained in *Owen* v. *Van Uster,* 10 C. B. 318; see Lindley, p. 95, note (*k*).

(*f*) See, as to partnerships at will, *post,* p. 287.

What is a Partnership.

expiration of the term: *Essex* v. *Essex*, 20 Beav. 442; *Hogg* v. *Hogg*, 35 L. T. 792; *Cox* v. *Willoughby*, 13 Ch. D. 863. But where articles provided for a particular mode of sale of the partnership assets upon the expiration of the term, or upon dissolution by notice as therein mentioned, it was held that this provision was not applicable to a partnership continued after the term had expired: *Woods* v. *Lamb*, 35 L. J. Ch. 309. And a clause providing in certain events for a special notice of dissolution is not so applicable: *Clark* v. *Leach*, 1 De G. & S. 409; see *Featherstonhaugh* v. *Fenwick*, 17 Ves. 307.

Specific performance.

The Court will not as a general rule enforce specific performance of a contract for a partnership: *Downs* v. *Collins*, 6 Ha. 418; *Scott* v. *Rayment*, L. R. 7 Eq. 112. In most cases, to force an unwilling person to become a partner with another would not conduce to the interests of either party; and, moreover, as regards partnerships at will, the parties might put an end to the agreement immediately afterwards: *Hercy* v. *Birch*, 7 Ves. 357; *Sheffield Gas Co.* v. *Harrison*, 17 Beav. 294. The only exceptions to this rule appear to be where there has been part performance, and it is essential to the ends of justice, that a formal instrument should be executed in order to place the parties definitely in the position agreed upon: see *Buxton* v. *Lister*, 3 Atk. 385; *Stocker* v. *Wedderburn*, 3 K. & J. 403; *England* v. *Curling*, 8 Beav. 129.

Remedy for breach of agreement for partnership.

In case of breach of an agreement for a partnership the proper remedy is by an action for damages: *Walker* v. *Harris*, 1 Anst. 245; *M'Neill* v. *Reid*, 9 Bing. 68; *Scott* v. *Rayment*, L. R. 7 Eq. 112. And in assessing the damages, they will be measured not only by the estimated value of the plaintiff's share but also by taking into consideration any special circumstances, such as that the plaintiff has, in contemplation of the intended partnership, sacrificed other profitable employment: *M'Neill* v. *Reid*, 9 Bing. 68. No action, however, will lie unless the terms of the agreement are proved: *Figes* v. *Cutler*, 3 Stark. 139.

What is a Partnership.

Sub-partnerships.

If a partner enter into a sub-contract with a third person to allow him a portion of the profits in consideration of his performing the partner's *quota* of the partnership engagement, this gives him no claim as partner against the others: *Bray* v. *Fromont*, 6 Madd. 5; *Gibbons* v. *Wilcox*, 2 Stark. 43; *M'Neill* v. *Reid*, 9 Bing. 68. In *Ex parte Barrow*, 2 Rose, at p. 254, Lord *Eldon*, says, "I take it to have been long since clearly established that a man may become a partner with A. when A. and B. are partners, and yet not be a member of that partnership which existed between A. and B." See also *Frost* v. *Molton*, 21 Beav. 596.

General and particular partnerships.

All partnerships are necessarily more or less limited in the extent of their objects, for persons cannot well be partners in all the transactions of life. The term "general partnership" is sometimes used to designate a partnership extending to the general course of dealing in a trade or business, as distinguished from a partnership in a single particular transaction only. There is, however, no real distinction, known to English law, between a partnership for the general conduct of a trade or business, and what is sometimes called "a joint adventure," that is to say, an agreement by which two or more persons agree to engage in a particular transaction, and share the profit or loss, except so far as that the narrower the scope of the partnership, the more restricted is the liability. The principles applicable to both are for the most part the same, though in certain cases a difference exists in the extent of the partners' responsibility to third persons: *Heyhoe* v. *Burge*, 9 C. B. 431; see also the observations of Lord *Eldon* in *Davidson* v. *Robertson*, 3 Dow. 229.

Acquisition of profit.

It is an essential element in the partnership that the parties should contribute their skill or capital with a view to profit or gain. So in a recent case where a person was convicted under the stat. 31 & 32 Vict. c. 116, for embezzling moneys belonging to an association having for its object not the acquisition of gain but the spiritual and mental improvement of its members, it was held that the

What is a Partnership.

association was not a "co-partnership," and that consequently the conviction must be reversed: *Reg.* v. *Robson*, 16 Q. B. D. 137. So also where two partners by a deed of arrangement, executed by themselves and their creditors, assigned their property to trustees upon trust to carry on the business for the purpose of paying off the debts of the creditors named in the schedule to the deed, and to hold the surplus for the two partners, it was held that, as the creditors could derive no profit from the business, there was no partnership between them and the debtors: *Cox* v. *Hickman*, 8 H. L. C. at p. 302; see also *Re Stanton Iron Co.*, 21 Beav. 164; *Re English and Irish, &c., Ass. Society*, 1 H. & M. 85.

The legislature has from time to time passed Acts requiring associations formed with a view to the acquisition of gain, and consisting of more than a certain number of persons to be registered, and questions have not unfrequently arisen as to whether particular associations came within these enactments as being formed for the acquisition of gain. A question of this kind arose under the stat. 7 & 8 Vict. c. 110, in the case of *R.* v. *Whitmarsh*, 15 Q. B. 600, where a company was formed for the purchase, out of funds subscribed by its members, of lands to be allotted to each member in severalty in proportion to his subscription; it was held that though profit might incidentally arise to the individual members by means of the intended transactions, this was not a joint stock company established for purposes of profit so as to require registration under the Act. This decision was followed in *Bear* v. *Bromley*, 18 Q. B. 271, where it was held that the same Act did not apply to a society formed for the purpose of making advances to members by way of loan out of funds raised by subscriptions. See also *Moore* v. *Rawlins*, 6 C. B., N. S. 289.

R. v. *Whitmarsh.*

Harris v. *Amery.*

Harris v. *Amery*, L. R. 1 C. P. 148, was a case under sect. 4 of the Companies Act, 1862 (see *ante*, p. 196). In that case forty-six persons hired land with buildings upon it at a rent, and used the premises for purposes of grazing and farming; the

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partnership was not registered, and the question was whether or not the partners were entitled to the parliamentary franchise; it was shown that the partnership was formed avowedly for the purpose of creating votes and making profit out of the farm, but the votes were the principal object: it was held that the association was illegal for want of registration, and that the partners were consequently disqualified.

Re Arthur Average Association.

By the rules of a mutual marine insurance association the members agreed to insure each other's ships for a certain period: a reserve fund was created by payment of premiums in advance, out of which losses were to be paid, and any deficiency in the fund was to be made up by the members *pro ratâ*, according to the amounts insured by them; the managers had power to issue policies for special risks at special premiums not included in the reserve fund, it was held that the association, not having been registered, was illegal: *Re Arthur Average Association*, L. R. 10 Ch. 542. See also *Re Padstow Total Loss, &c., Association*, 20 Ch. D. 137 (*e*).

In the case of *Smith* v. *Anderson*, 15 Ch. D. 247, a number of persons subscribed to purchase telegraph shares to be vested in trustees. The subscribers received certificates for £100 each for every £90 subscribed. The trustees were to hold the shares upon trust to pay interest on the nominal amounts of the certificates and apply the surplus in redeeming the certificates, with power to sell the shares at a specified premium, the proceeds of sales to be applied in redemption of certificates. It was held, reversing the decision of *Jessel*, M. R., that the certificate holders did not form an association for the acquisition of gain.

Clubs, scientific and literary associations, &c.

There are, indeed, a few not very recent cases where the term "partnership" has been applied to clubs and other voluntary societies—for example, to

(*e*) In this case *Lindley*, L.J. (at p. 149) observed that the words "or by the individual members thereof" were inserted in sect. 4, to meet the cases of *R.* v. *Whitmarsh* and *Bear* v. *Bromley*.

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a lodge of freemasons: *Lloyd* v. *Loaring*, 6 Ves. 773 (1802); to a loan society, *Silver* v. *Barnes* (1839), 6 Bing. N. C. 180; to a friendly society, *Beaumont* v. *Meredith*, 3 Ves. & B. 180; to a club, *Richardson* v. *Hastings* (*infra*). But in the above cases the word seems to have been used somewhat loosely, and merely for the purpose of distinguishing such associations from corporate bodies or joint-stock companies.

In the case of internal disputes and for the purposes of dissolution and distribution of assets, such associations have some of the rights of partners *inter se*: *Richardson* v. *Hastings*, 7 Beav. 301, 317; 11 Beav. 17. But the use of the word in these cases is misleading, and it is now settled that an ordinary club has not the nature of a partnership. Lord *Abinger* points this out in *Fleming* v. *Hector*, 2 M. & W. at p. 179; and in *The St. James's Club*, 2 De G. M. & G. at 389. Lord *St. Leonards* says: "Bearing in mind that the individuals who form a club do not constitute a partnership, nor incur any liability as such, I think associations of that nature are not within the Winding-up Acts." So in *Caldicott* v. *Griffiths*, 8 Ex. 898, where a voluntary society was formed "for the protection of trade," it was held upon the construction of the rules, that no partnership *inter se* was intended, but that the case was similar to that of persons subscribing to a hospital or to an ordinary club.

The ground upon which individual members of the committee or of the general body of such associations become liable is not because they are or have held themselves out to be partners, but merely because they have so acted as to pledge their personal credit to the tradesmen or other persons to whom liability is incurred. Thus, in *Delauney* v. *Strickland*, 2 Stark. 416, it was held, that when goods where ordered by a member of a club for the benefit of all, every member who concurred in the order, or who subsequently assented to it, was liable, although the creditor had made out the bill in the name only of the member who gave the order: see *Braithwaite* v. *Skofield*, 9 B. & Cr. 401, *Re St. James's*

Club, 2 De G. M. & G. 383. On the other hand, when a club is, by its rules, to be conducted on ready-money principles, each member paying a sum for entrance, and a subscription in advance, and all extraordinary expenditures being undertaken under the sanction of a general meeting, the members of the committee of management, having thus a fund in hand, cannot contract debts on the credit of the members generally. A party who gives his agent money to obtain goods is not liable if the agent takes them up on credit: *Fleming* v. *Hector*, 2 M. & W. 172; see *Todd* v. *Emly*, 8 M. & W. 505. Private societies, for raising by subscriptions among the members a fund for relief in sickness, &c., are treated in equity as ordinary partnerships: *Beaumont* v. *Meredith*, 3 V. & B. 180; and see *Burls* v. *Smith*, 7 Bing. 705, as to liability for the supply of bread to a hospital; *Luckombe* v. *Ashton*, 7 Fos. & Fin. 705; as to supply of drugs to a dispensary; *Wood* v. *Finch*, 2 Fos. & Fin. 447, and *Cockerell* v. *Aucompte*, 2 C. B. (N. S.) 440, as to supply of coals to a club; and *Cross* v. *Williams*, 7 H. & N. 675, where upon the evidence the captain of a volunteer corps was held liable for uniform supplied to members of the corps: see also *Whillier* v. *Roberts*, 28 L. T. 668, which was the case of a church building committee.

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Participation of profits was formerly regarded as the test of partnership: *Fox* v. *Barge*, 9 Bing. 799; *Ex parte Langdale*, 18 Ves. 300. But as has already been stated this is no longer the case: *ante*, p. 197. Where there is an agreement to share *profit and loss* (*f*), there is a strong presumption that a partnership exists between the parties, but the question of partnership depends on the intention of the parties to be gathered from the agreement, and from their conduct: *Smith* v. *Watson*, 2 B. & C. 491;

Participation of profits.

Agreement to share profit and loss.

(*f*) An agreement to share profit and loss must be understood as conferring a right to a proportion of the profit, if any, beyond the capital advanced, and imposing a liability to loss, if any, beyond the loss of the advances: see Lindley on Partnership, pp. 15, 16. Gross profits seems to be a somewhat inaccurate expression synonymous with gross returns, *i.e.*, the returns calculated without deducting the expenses of obtaining them.

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Syers v. *Syers*, 1 App. Ca. 474; *Walker* v. *Hirsch*, 27 Ch. D. 460. In *Pawsey* v. *Armstrong*, 18 Ch. D. at p. 704, *Kay*, J., expressed his opinion that an agreement to share profit and loss was quite conclusive of the existence of a partnership, but that dictum may be regarded as overruled by the decision of the Court of Appeal in *Walker* v. *Hirsch*, *supra*. See also the observations of Lord *Blackburn* in *Noakes* v. *Barlow*, 26 L. T. at p. 139; *S. C.*, 20 W. R. 388. The converse proposition that where there is no agreement, express or implied, to share profits and losses there will be no partnership was laid down in *Hoare* v. *Dawes*, 1 Dougl. 371, and may be regarded as a rule of general application. In the following cases, there being such an agreement, it was held that a partnership existed: *Reid* v. *Hollingshead*, 4 B. & C. 867; *Nicholson* v. *Ricketts*, 2 E. & E. 497; *Brett* v. *Beckwith*, 3 Jur., N. S. 31; *Green* v. *Beesley*, 2 Bing. N. C. 108; *Pawsey* v. *Armstrong*, 18 Ch. D. 698, *sed vide supra*. In the following cases the absence of evidence of such an agreement was held to negative the existence of a partnership: *Strong* v. *Harvey*, 3 Bing. 304; *Gibson* v. *Layton*, 9 Bing, 297; *Pott* v. *Eyton*, 3 C. B. 32.

Agreement to share profits without mentioning losses.

Where there is an agreement to share profits *simpliciter*, and no mention is made of sharing losses, it will be presumed, in the absence of evidence to the contrary, that it was the intention of the parties that losses as well as profits should be shared, and accordingly a contract of partnership will *primâ facie* be deemed to have been constituted: *Greenham* v. *Gray*, 4 Ir. C. L. R. 501; *Dry* v. *Boswell*, 1 Campb. 330; *Heyhoe* v. *Burge*, 9 C. B. 440; see *Pooley* v. *Driver*, 5 Ch. D. 458. But an agreement to share profits is by no means a conclusive test of the existence of a partnership, and the presumption may be rebutted by evidence of a contrary intention: see *Cox* v. *Hickman*, 8 H. L. C. 268, and the other cases cited *ante*, p. 197.

Limiting liability in respect of losses.

In *Brown* v. *Tapscott*, 6 M. & W. 119, an agreement whereby profits and losses were to be divided in specified proportions contained a provision expressly limiting the liability of certain of the parties

as regards losses; it was held, nevertheless, that the agreement constituted a partnership. There is, however, no objection to a clause in a partnership agreement regulating or limiting the liability of a party in respect of losses; the effect of such a provision will be that the party is to be indemnified by the other parties against loss either absolutely or beyond a certain amount, and it will hold good as between the parties themselves, though it will not affect the liability of the party so indemnified to third persons if he is shown *aliunde* to be a partner: *Bond* v. *Pittard*, 3 M. & W. 357; *Geddes* v. *Wallace*, 2 Bli. 270; *Waugh* v. *Carver*, 2 H. Bl. 235; *Gilpin* v. *Enderby*, 5 B. & Al. 954; *Reade* v. *Bentley*, 4 K. & J. 663; *Ross* v. *Parkyns*, L. R. 20 Eq. 331; *Syers* v. *Syers*, 1 App. Ca. 174. **What is a Partnership.**

It is clear that the acquisition of a joint interest in land does not *per se* render the co-proprietors partners. In order to constitute a partnership between them, there must be such a joint dealing with the property as to indicate an intention of the parties to enter into the contract of partnership (see *ante*, p. 199); *ultra* the mere purpose of occupation or enjoyment: *Kay* v. *Johnston*, 21 Beav. 536. Co-ownership not necessarily partnership.

In regard to mines, joint owners of a mine are not necessarily partners any more than joint owners of surface-land: *Dickinson* v. *Valpy*, 5 Man. & Ry. 126, 139. And land purchased out of the profits of quarries worked by co-owners does not thereby become partnership property: *Steward* v. *Blakeway*, L. R. 4 Ch. 603. But a difficult question sometimes arises, whether if persons holding undivided shares in such property concur in working mines, for the purpose of bringing the produce of their joint property to market, this constitutes them partners in trade. Since it is generally by means of co-operative management only that the property can be beneficially enjoyed by a large number of proprietors (joint occupation being impossible), in most cases a partnership will be found to exist. And under some circumstances the Court will appoint a receiver and manager: *Jefferys* v. *Smith*, 1 J. & W. 298. But Mines.

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not, as a general rule, where no dissolution is asked for: *Roberts* v. *Eberhardt*, Kay, 148.

Where in addition to working their own mines, the parties purchase the produce of other mines to be manufactured and sold with their own, they are presumably trading partners: *Crawshay* v. *Maule*, 1 Swans. 523. And where several persons took a lease of mines for the purpose of working them, Sir *J. Leach*, M.R., treated it as clear that the general principles of partnership applied to such a concern: *Fereday* v. *Wightwick*, 1 Russ. & M. 45; vide *ante*, vol. 3, p. 500.

But where a person being the lessee of a mine enters into a partnership to work the mine, the mine does not thereby become partnership property: *Burdon* v. *Barkus*, 4 De G. F. & J. 42; and the purchase of a lease is not in itself evidence of the intended duration of the partnership: *Featherstonhaugh* v. *Fenwick*, 17 Ves. 298; *Crawshay* v. *Maule*, 1 Swans. at pp. 508, 521. Where no partnership exists in the mine, or its working, the doctrine with respect to the joint ownership of land will apply; but if the mine is worked in common it is difficult for the co-owners to escape incurring partnership liability to third persons: *ibid.* at pp. 518, 523.

Farms.

Farming and grazing are presumably businesses which have for their object the acquisition of gain. But where land devolves upon several co-owners by operation of law they do not necessarily become partners by carrying on farming operations thereon and selling the produce: *Harris* v. *Amery*, L. R. 1 C. P. 148.

Ships.

Part-owners of ships are not necessarily partners: *Hooper* v. *Lusby*, 4 Comp. 66; *Burnard* v. *Aaron*, 31 L. J. C. P. 334.

Co-proprietors of goods not necessarily partners.

So, it has been frequently decided, that persons do not become partners by merely possessing goods or other personal chattels in certain aliquot shares. Thus, in *Coope* v. *Eyre*, 1 H. Bl. 37 (which is a leading case), it was held that the purchase of goods by one of four persons on account of himself and the other three, under an agreement that they should be interested therein in certain aliquot shares, did not

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constitute them partners as between themselves, there being no agreement that they should *jointly* resell the goods, nor as regarded third parties; and, consequently, that one becoming bankrupt, an action could not be maintained by the vendor to recover damages for the non-performance of the contract, against the others as partners. So, in *Hoare* v. *Dawes*, Doug. 371, where a broker, on behalf of himself and several other persons, purchased tea, of which they, together with himself, were to have separate shares, it was held that this was not a partnership transaction, but merely an undertaking by each with the broker to take a particular quantity, without any agreement to share the profit or loss. And even where the purchase is made with a view to a future joint trading with the property, this does not involve the parties in the liability of partners in relation to such purchase: see *Greenslade* v. *Dower*, 7 B. & C. 635. And the fact of a person becoming by *subsequent* contract a sharer in an adventure with goods already purchased by his colleague, does not render him liable to the vendor: *Young* v. *Hunter*, 4 Taunt. 583; see also *Saville* v. *Robertson*, 4 T. R. 720, where a somewhat similar question arose. But, in *Gouthwaite* v. *Duckworth*, 13 East, 426, it was decided, that a purchase made by two persons on behalf of themselves and another, with whom they had no general partnership, bound all the parties, though the vendor furnished the goods on the sole responsibility of the ostensible purchasers alone: see also *Delauney* v. *Strickland*, 2 Stark. 416. If a partner draws a bill in his own name, which is discounted by a third person, and the proceeds are applied by the drawer to the use of the partnership, this application of the proceeds does not render the firm liable to the holder of the bill: *Emly* v. *Lye*, 15 East, 7. So, where a person borrows money on his own private account, which he subsequently devotes to partnership purposes: *Lloyd* v. *Freshfield*, 9 D. & Ry. 19. If two persons, not being partners, give a joint order for particular goods, without in terms or by implication undertaking a joint liability (as by directing the seller to draw upon *each* of them), no

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partnership arises: *Gibson* v. *Lupton*, 9 Bing. 297; 2 Moo. & Sc. 371.

Coach-proprietors.

Questions as to whether or not a partnership existed formerly often arose with respect to stage-coaches. So it was held that an agreement between two persons for each to supply a stage-coach with horses and to share the profits (as to which see *infra*), rendered them liable to third persons as partners: *Fromont* v. *Coupland*, 2 Bing. 170; see *Green* v. *Beesley*, 2 Bing. N. C. 108. But a person furnishing forage to one proprietor for the supply of the horses which were his exclusive property was held to have no claim upon the other: *Barton* v. *Hanson*, 2 Taunt. 49.

Partnership liability.

Partnership Liability.]—The law in respect to partnership liability rests now on more sound and satisfactory principles than was formerly the case. It is now settled that a person is liable as a partner only in two cases, viz., either if he is an actual partner, even though only a secret or dormant partner, or if he has held himself out to be a partner, so as to induce third parties to believe that he is actually a partner: see *Hoare* v. *Dawes*, 1 Dougl. 371; *Waugh* v. *Carver*, 2 H. Bl. 235; *M'Iver* v. *Humble*, 16 East, 169.

Old rule as to liability by sharing profits.

It was at one time considered that there existed in law a third ground of liability, viz., that a person, though not a partner by virtue of any agreement, nor by holding himself out as such, might render himself liable to the creditors of the firm merely by receiving a share of the profits of a business. This doctrine was supported by a principle which was first stated in *Grace* v. *Smith* (2 W. Bl. 998), to the effect that by taking a share of the profits, the person so doing was reducing a fund to which the creditors of the firm were entitled to look for payment of their debts. This principle was acted upon in *Waugh* v. *Carver* (2 H. Bl. 235), and, though its propriety was occasionally questioned, it was for many years assumed in arguments and judgments as a settled principle of law.

Cox v. *Hickman.*

However, in the year 1860, the decisions based on this principle were in effect overruled by the House

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of Lords in the leading case of *Cox* v. *Hickman*, 8 H. L. C. 268. In that case the facts were shortly as follows: Certain persons, trading under the name of the Stanton Iron Company, having become insolvent, a deed of arrangement was executed between them and their creditors, whereby the property of the traders was conveyed to trustees upon trust to carry on the business, with powers of management and of entering into contracts for that purpose, and to divide the net income amongst the scheduled creditors in rateable proportions, provided that in distributing such income it should be deemed the property of the debtors; the creditors were to accept the provisions of the deed in full satisfaction of their debts, and covenanted not to sue. The trustees carried on the business in pursuance of the deed, and the plaintiff having supplied some iron ore for the purposes of the business, they accepted bills of exchange in the name of the company for the price. The bills not having been met, the plaintiff sued the creditors as acceptors. The question was whether under the deed the defendants were partners with the trustees; and it was ultimately decided that they were not. In the Exchequer Chamber the judges were equally divided (see *Hickman* v. *Cox*, 3 C. B., N. S. 523), and in the House of Lords the judges who were then consulted were again equally divided; but the lords unanimously decided that the defendants were not liable as partners, on the ground that the test of liability is not merely whether a person participates in profits, but whether the business is carried on by persons acting in his behalf; or, in other words, whether there is such a participation of profits as to constitute the relation of principal and agent between the person taking the profits and the persons carrying on the business. This case has in effect put the law with regard to partnership liability on a new footing, and the principle there laid down has been followed in numerous subsequent decisions: see *English and Irish, &c. Assce. Soc.*, 1 H. & M. 85; *Bullen* v. *Sharp*, L. R. 1 C. P. 86; *Shaw* v. *Galt*, 16 Ir. C. L. R. 357; *Holme* v. *Hammond*, L. R. 7

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Ex. 218; *Ross* v. *Parkyns*, L. R. 20 Eq. 331; *Mollwo, March & Co.* v. *Court of Wards*, L. R. 4 P. C. 419; see *Pooley* v. *Driver*, 5 Ch. D. 458.

According to this principle the question resolves itself into one of agency: whether upon the whole agreement between the parties the alleged partner did or did not constitute the persons admittedly members of the firm his agents to make profits, and if necessary to incur losses, and generally to conduct the business on his behalf as well as their own; and the ground on which a person, who has so constituted himself a partner, is liable as a partner seems to be based on the well-known general principle, on which an undisclosed principal is liable for the authorized acts of his agent: see *Cothay* v. *Fennell*, 10 B. & C. 671; *Beckham* v. *Drake*, 9 M. & W. 79; *S. C.*, affirmed 11 M. & W. 315.

Bovill's Act.

In order to remove any uncertainty which might exist as to the effect of the decision in *Cox* v. *Hickman*, the stat. 28 & 29 Vict. c. 86, was passed in 1865, which Act is commonly known as "Bovill's Act," and intituled, "An Act to amend the Law of Partnership," whereby it was enacted that:—

The advance of money on contract to receive interest varying with profits, or a share of profits, not of itself to constitute the lender a partner.

Sect. 1. "The advance of money by way of loan to a person engaged or about to engage in any trade or undertaking upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not of itself constitute the lender a partner with the person or persons carrying on such trade or undertaking, or render him responsible as such."

The remuneration of agents, &c., by share of profits not to make them partners.

Sect. 2. "No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking shall of itself render such servant or agent responsible as a partner therein, nor give him the rights of a partner."

Certain annuitants not to be deemed partners.

Sect. 3. "No person being the widow or child of the deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall by reason only of such receipt be deemed to be a partner of or to be subject to any liabilities incurred by such trader."

Receipt of share of profits in

Sect. 4. "No person receiving by way of annuity or otherwise a portion of the profits of any business in consideration of the sale

by him of the goodwill of such business, shall by reason only of such receipt be deemed to be a partner of or be subject to the liabilities of the person carrying on such business."

consideration of sale of goodwill not to make the seller a partner.

Sect. 5. "In the event of any such trader as aforesaid being adjudged a bankrupt or taking the benefit of any act for the relief of insolvent debtors or entering into any arrangement to pay his creditors less than twenty shillings in the pound or dying in insolvent circumstances the lender of any such loan as aforesaid shall not be entitled to recover any portion of his principal or of the profits or interest payable in respect of such loan, nor shall any such vendor of a goodwill as aforesaid be entitled to recover any such profits as aforesaid, until the claims of the other creditors of the said trader for valuable consideration in money, or money's worth, have been satisfied."

In case of bankruptcy, &c., lender or vendor of goodwill not to rank with other creditors.

Sect. 6. "In the construction of this Act the word 'person' shall include a partnership firm, a joint-stock company, and a corporation."

Interpretation of "person."

Several points with regard to the effect of the above enactments require to be briefly considered.

Effect of Act.

Although sect. 1 in certain cases protects advances by way of loan at a rate of interest varying with the profits, or in consideration of a share in the profits, yet, where it appears upon the whole contract that the person making the advance is in reality making it as a partner, and not by way of loan, a declaration or assertion in the contract that the money is advanced by way of loan under this section will not of itself protect the alleged lender from being liable as a partner: see *Ex parte Mills*, L. R. 8 Ch. 569; *Pooley* v. *Driver*, 5 Ch. D. 458; *Ex parte Delhasse*, 7 Ch. D. 511.

Advance by way of loan.

In *Syers* v. *Syers* (1 App. Ca. 174), an agreement in writing was executed in the following terms: "In consideration of the sum of £250 this day paid to me, I hereby undertake to execute a deed of co-partnership to you for one-eighth share in the profits of the Oxford Music Hall and Tavern, to be drawn up under the Limited Partnership Act (28 & 29 Vict. c. 86), commonly called 'An Act to amend the Law of Partnership':" and it was held that a contract of partnership at will was constituted by this agreement, with an implied stipulation that, as between the parties themselves, the party taking

Syers v. *Syers*.

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the eighth share of the profits should be indemnified against loss. In order to entitle a lender to the benefit of the Act there must be a contract in writing, and an unsigned contract does not satisfy the requirements of the Act, though such an instrument may be admitted in evidence to show the terms on which the advance was made: *Pooley* v. *Driver*, *supra*.

Remuneration of agents &c., by share of profits.

It will be observed that the protection afforded by sects. 2 and 3 of the Act is not restricted to contracts in writing. Where an agreement provided that a clerk to a firm should receive a fixed salary, and in addition should receive a share of the profits, and bear a proportionate share of the losses, it was held by the Court of Appeal that he was not thereby constituted a partner in the firm: *Walker* v. *Hirsch*, 27 Ch. D. 460, overruling in effect the decision in *Pawsey* v. *Armstrong*, 18 Ch. D. 698.

Annuitants.

With regard to the protection of annuitants, it has been decided that a stipulation in articles of partnership for payment of an annuity to the widow of a deceased partner creates a trust in her favour; and that not only is she not liable as a partner, but the creditors of her deceased husband have no claim upon the annuity paid to her pursuant to the stipulation: *Re Flavell*, 25 Ch. D. 89.

Bankruptcy.

The operation of the 5th section is somewhat limited. Cases under sects. 2 and 3 do not fall within it. Lenders and vendors of goodwill are alone affected by it. This section is to be construed strictly, even though it appears that such a construction will place the person advancing money in a worse position than a partner: *Ex parte Mills*, L. R. 8 Ch. 569; *Ex parte Taylor*, 12 Ch. D. 366. A person advancing money under sect. 1 cannot prove in competition with any creditors of the trader to whom the money is advanced, whether their claims arose before or after the termination of the agreement for the loan: *ibid.* But where a person so advancing money also makes advances to the trader at a fixed rate of interest, he may prove for the latter *pari passu* with the other creditors: *Ex parte Mills*, *supra*. And there is nothing in the 5th section to prevent a person who has advanced

money under the 1st section, and who has taken a legal mortgage to secure the advance, from availing himself of his security as against the creditors in the bankruptcy of the trader: *Ex parte Sheil*, 4 Ch. D. 789, overruling *Ex parte M'Arthur*, 40 L. J., Bkcy. 86. What is a Partnership.

In *Holme* v. *Hammond* (L. R. 7 Ex. at p. 227), *Kelly*, C.B., expressed his opinion that the effect of this statute was that, as respects the protected classes, the sharing of profits is to be no evidence whatever of a partnership, whereas in all other cases an agreement to share profits is strong, though as has been seen, not conclusive evidence of the existence of the relation. Generally.

All persons who are actually partners by virtue of the agreement between them, either express or implied by their conduct, will be liable as partners, whether or not the fact of their being partners is known to others besides the partners themselves; thus, a secret or dormant partner(*g*) incurs liabilities equally with the ostensible or acting members of the firm: *Brett* v. *Beckwith*, 3 Jur., N. S. 31. Secret and dormant partners.

In *Wintle* v. *Crowther*, 1 Cr. & J. 316, the Court expressed the opinion "that where a partnership name is pledged, of whomsoever it may consist, and whether the partners are named or not, and whether they are known or secret partners, they will be bound." And if one of several partners contracts with another person in his own name, his co-partners are liable, even though the existence of a partnership was unknown to the person so contracted with, if at the date of the contract the partnership had in fact commenced: *Saville* v. *Robertson*, 4 T. R. 720. In *Beckham* v. *Drake*, 9 M. & W. 79; *S. C.*, affirmed 11 M. & W. 315, *Abbot*, C. J., said, "It seems to me to be opposed to every rule of law to say that a man who has by his partners entered into a contract is

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(*g*) A secret partner may be defined as one who is not known to be a partner; a dormant partner is one who takes no active part in the management of the business and affairs of the partnership. A dormant partner will generally be a secret partner, and the two terms are often used synonymously. Secret and dormant partners.

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not bound by the contract." And in the same case, *Parke*, B., said, "Being a dormant partner, he authorises the ostensible partners to enter into such contracts as are usually entered into in the course of such a business." A dormant partner is not discharged from his liability on retiring from the firm unless the liabilities existing at the time of his retirement are extinguished as against the ostensible partners: *Robinson* v. *Wilkinson*, 3 Pri. 538. But the liability of a retiring dormant partner for the acts of his co-partners only extends to contracts and debts entered into and incurred while he was actually a partner: *Evans* v. *Drummond*, 4 Esp. 89; *Heath* v. *Sansom*, N. & M. 104. And where, after a secret partner has retired, bills accepted by the firm of which he was a member are exchanged for bills of the new firm, he is discharged from all liability, for the new bills are to be considered as appropriated in discharge of the old debt: *Newmarch* v. *Clay*, 14 East, 239.

Although a secret partner need not generally give notice of his retirement in order to terminate his liability, nevertheless if he is known by any particular customer of the firm to be a partner, he must give notice of his retirement to such customer, or otherwise he will not be discharged: *Farrar* v. *Deflime*, 1 C. & K. 580.

Actions by and against secret or dormant partners.

A secret or dormant partner may, if he thinks fit, join as a co-plaintiff in an action on a contract brought by the firm: *Cothay* v. *Fennell*, 10 B. & C. 671. But it is not necessary that he be so joined: *Leveck* v. *Shafto*, 2 Esp. 468; see *Lloyd* v. *Archbowle*, 2 Taunt. 324. Nor is a creditor of the firm obliged to join a dormant partner as defendant in an action against the firm. In *De Mautort* v. *Saunders*, 1 B. & Ad. 398, *Parke*, J., said, "If a person contract with two others, he may sue them only; if, after the contract was made, he discover that they had a secret partner who had an interest in the contract, he is at liberty to sue that secret partner jointly with them, but he is not bound to do so." See also *Mallet* v. *Hook*, Moo. & M. 88; *Stansfield* v. *Levy*, 3 Stark. 8. In *Kendall* v. *Hamilton*, 4 App.

Ca. 504, it was held (*dissentiente* Lord *Penzance*) that if a creditor of a firm sues the ostensible partners, he cannot afterwards bring another action against a dormant partner of the firm. This decision followed the principle laid down in *King* v. *Hoare*, 13 M. & W. 494. See also *Re Hodgson, Beckett* v. *Ramsdale*, 31 Ch. D. 177. What is a Partnership.

Persons who allow their names to be used in a firm, or otherwise hold themselves out to be partners, thereby become liable to its engagements, though they have no actual interest in the profits. Cases of this kind afford little matter for discussion, as they turn entirely upon the point, whether the party attempted to be charged has held himself out to the world as partner: see *Ex parte Matthews*, 3 Ves. & B. 125; *Spencer* v. *Billing*, 3 Camp. 310; *Goode* v. *Harrison*, 5 B. & Al. 147; *De Berkom* v. *Smith*, 1 Esp. 29; *Parker* v. *Barker*, 3 Moo. 226; *M'Iver* v. *Humble*, 16 East, 169; *Fox* v. *Clifton*, 4 Moo. & P. 676; and the affirmative being established, the responsibility incident to the relation necessarily ensues. Of course, a party representing himself to a third person as partner, is to all purposes liable to be charged as such in transactions with that person, whether the representation be true or false: see *De Berkom* v. *Smith*, 1 Esp. 29. Holding out.

In order to charge a person ostensibly a partner, who has no actual interest, it is not necessary for a particular creditor to show that he contracted with the firm on the faith of such party's liability: *Young* v. *Axtell*, 2 H. Bl. 242. But the plaintiff must show that he knew of the fact that the defendant had held himself out to be a partner. Where it was attempted to charge a defendant as partner in a mining company, it was said by *Parke*, J., "If it could have been proved that the defendant had held himself out to be a partner, not 'to the world,' for this is a loose expression, but to the plaintiff himself, or under such circumstances of publicity as to satisfy a jury that the plaintiff knew of it, and believed him to be a partner, he would be liable to the plaintiff in all transactions in which he engaged and gave credit to the defendant upon the faith of his being such

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partner. The defendant would be bound by an indirect representation to the plaintiff arising from his conduct, as much as if he had stated to him directly, and in express terms, that he was a partner, and the plaintiff had acted upon that statement:" *Dickinson* v. *Valpy,* 10 B. & C. 140. Lord *Ellenborough* is reported to have held that a nominal partner cannot be charged as such by a person who, at the time of giving credit, had notice of an agreement among the members of the firm, that he should not participate in the profits, or be liable as a partner: *Alderson* v. *Pope,* 1 Camp. 404, n. But the report of the case is meagre and unsatisfactory, and the soundness of the decision appears open to question: see Lindley on Partnership, p. 48; and see *Brown* v. *Leonard,* 2 Chit. 120; *Shott* v. *Streetfield,* 1 Moo. & R. 9; *Ex parte Watson,* 19 Ves. 461; *Kirkwood* v. *Cheetham,* 2 F. & F. 798.

In order to render a person liable as a partner, it is sufficient to show that he has allowed another person to hold him out as a partner: *Mulford* v. *Griffin,* 1 F. & F. 145. But the mere fact that A. holds out B. as his partner will not render B. liable, unless B. has authorised or acquiesced in such holding out: *Edmundson* v. *Thompson,* 2 F. & F. 564. So, in *Pott* v. *Eyton,* 3 C. B. 32, one of the questions put to the jury by *Tindal,* C. J., was "whether Eyton had been by his own permission held out as a partner, and his credit pledged to the bank." See also *Martyn* v. *Gray,* 14 C. B., N. S., 824. Where a retired partner's name continues over the door of the premises where the business of his former firm is carried on, it lies with him to prove that a person seeking to make him still liable as partner had notice of his retirement: *Williams* v. *Keats,* 2 Stark. 290; see *Parkin* v. *Carruthers,* 3 Esp. 248; *Dolman* v. *Orchard,* 2 C. & P. 104. But a person cannot be made liable as a partner on the ground of his holding himself out as such, unless he did so previously to the contract in respect of which the alleged liability was incurred: *Baird* v. *Planque,* 1 F. & F. 344.

The general.

What is a Firm.]—"Persons who have entered

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nature of a partnership firm.

into partnership with one another are called collectively a firm :" Indian Contract Act (IX. of 1872). And the mercantile notion of a firm is that of a body distinct from the individual members composing it, and continuing the same notwithstanding changes in its composition by the introduction of new partners, or by deaths or retirement of old members : Lindley on Partnership, 206. But this view has never obtained any legal recognition in this country (*h*). " There is no such thing as a firm known to the law :" Per *James*, L.J., in *Ex parte Corbett*, 14 Ch. D. at p. 126 ; see also *Hoare* v. *Oriental Bank Corporation*, 2 App. Ca. 589 ; *Pooley* v. *Driver*, 5 Ch. D. at p. 476 ; *Ex parte Blaine*, 12 Ch. D. at p. 533. The general rule of law is, that a firm simply means the individual members composing it, the partnership property is the property of those members, and the partnership debts are debts for which each individual member is personally liable, whether or not the partnership assets are sufficient to meet liability. Partnership accounts are generally kept on the footing of the members being creditors of, or debtors to the firm. " But though these terms ' creditor ' and ' debtor ' are so used, and sufficiently explain what is meant by the use of them, nothing can be more inconsistent with the known law of partnership than to consider the situation of either party as in any degree resembling the situation of those whose appellation has been so borrowed. The supposed creditor has no means of compelling payment of his debt, and the supposed debtor is liable to no proceedings at law or in equity, assuming always that no separate security has been taken or given. The supposed creditor's debt is due from the firm of which he is a partner, and the supposed debtor owes the money to himself in common with his partners, and pending the partnership equity will not interfere to set right the balance between the partners :" per Lord *Cottenham*, C., in *Richardson*

(*h*) By the law of Scotland a firm is a separate person capable of suing or being sued by either strangers or its own members in its " social name ; " and actions are maintainable between firms having a common member : Bell, Pr. of Law of Scotland, s. 357.

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v. *Bank of England*, 4 My. & C. at p. 171. So also any change in the composition of the firm by death or otherwise will destroy its identity. This question will be further considered later in treating of the dissolution of partnerships.

Action by and against firm.

This rule of law formerly extended so far, that if an action was brought by or against a firm, it was necessary to make all the individual partners *nominatim* parties thereto. But now by the Rules of the Supreme Court, 1883, Ord. XVI., r. 14, persons claiming or being liable as partners may sue and be sued in the name of their firms, of which such persons were partners at the time of the accruing of the cause of action (*i*). The results of the non-recognition of the firm, apart from the members composing it, will be considered later in treating of the obligations of partners and of partnership property.

2. Who may be Partners.

Generally.

As a general rule all persons capable of contracting can enter into a binding contract of partnership, but certain classes of persons are legally under disabilities which render them altogether or partially incapable of entering into the partnership relation. This subject will be here briefly considered.

Alien enemies.

Alien Enemies.]—The effect of a declaration of war is to put an end to all commercial intercourse between the subjects of the two belligerent countries. All endeavours to trade with the enemy by partnership firms or others are forbidden, and all commercial partnerships between subjects of the two countries are dissolved by the mere force and act of the war itself: see Halleck's International Law,

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(*i*) The definition of the time at which the composition of the firm is ascertained adopts the view taken by *Brett*, L. J., in *Ex parte Young*, 19 Ch. D. 124.

Lord Justice Lindley is of opinion, that this rule will enable actions to be maintained between firms and their individual members; but the point has not yet been judicially decided: see Lindley on Partnership, 212; Pollock on Partnership, 20.

p. 481 ; see also *Ex parte Baglehole*, 18 Ves. 528 ; *Willison* v. *Patteson*, 7 Taunt. 439 ; *Evans* v. *Richardson*, 3 Mer. 469 ; *Esposito* v. *Bowden*, 7 E. & B. 763. Who may be Partners.

Clergymen.]—By the stat. 21 Hen. 8, c. 13, s. 5, spiritual persons were forbidden to engage in commerce or trade, and all partnerships and companies of which they were members were void : see *Hall* v. *Franklin*, 3 M. & W. 259. These disabilities are removed by the stats. 1 & 2 Vict. c. 106, and 4 Vict. c. 14, whereby, although the prohibition is continued under certain penalties, it is enacted that contracts entered into contrary to the prohibition shall not be void : see *Lewis* v. *Bright*, 4 E. & B. 917. Even under the old law a clergyman who engaged in trade was not allowed to plead his own wrongdoing as a defence in regard to the payment of the debts he had incurred : *Ex parte Meymot*, 1 Atk. 196. Clergymen.

Convicts and Outlaws.]—The position of a convicted felon is regulated partly by the common law, and partly by the stat. 33 & 34 Vict. c. 23, s. 8, whereby he is rendered generally incapable of alienating or charging any property, or of making any contract. He is consequently incapable of entering into a contract of partnership. He is in many respects *civiliter mortuus*, and the Crown is empowered by the same statute to appoint an administrator of his property : sect. 6. It would seem that the conviction of a person who is actually a partner in a firm would effect a dissolution of the partnership, as in the case of death. A convicted felon is, however, liable to pay his debts, and may be made a bankrupt : *Ex parte Graves*, 19 Ch. D. 1. Convicted felons.

An outlaw's share in a partnership or company vests in the Crown ; and though he may contract, he cannot sue in his own right until removal of his disability by a reversal of the outlawry : Bac. Abr. *Felony and Outlawry*, Co. Lit. 128 : see also Lindley on Partnership, 80. Outlaws.

Infants.]—By the Infants Relief Act, 1874 (37 & 38 Vict. c. 62), sect. 1, all accounts stated with Infants.

Who may be Partners.

infants are void; and by sect. 2 of the same Act no action is maintainable on a ratification made upon attaining full age of any contract entered into in infancy: see the Act set out *ante*, Vol. II., p. 271. It is clear that an infant cannot, in the absence of fraud on his part, incur any liability as a partner for debts of the firm during his minority (*k*). He may, nevertheless, be a partner, and may receive a share in the profits of the business. "Although an infant is generally repelled from a contract of partnership as being of too hazardous a nature for an infant to engage himself in, yet undoubtedly, on the most ancient authorities, he might make a contract for his own benefit:" per Lord *Ellenborough* in *Glossop* v. *Coleman*, 1 Stark. 25.

Under the old law it was held that an infant partner, on attaining his majority, might either repudiate or ratify the contract of partnership, and, if he had openly acted as partner, he was bound, when of age, by some positive act to disaffirm the partnership, and his neglect to do so rendered him liable for the subsequent engagements of the firm, for the fact of his non-interference since he attained his majority was not regarded as sufficient to discharge him: *Goode* v. *Harrison*, 5 B. & Al. 147; see *Holmes* v. *Blogg*, 8 Taunt. 35, where four months was considered a reasonable time within which a decision should be made and acted on either to adopt or repudiate the contract.

So also it has been held that an infant shareholder might, on attaining full age, elect whether he would hold his shares or repudiate them, and so free himself from all liability in respect of them; but if he did not repudiate them, he must pay calls like any other shareholder: *Hart's Case*, L. R. 6 Eq. 512; *Wilson's Case*, L. R. 8 Eq. 240;

(*k*) An infant could not even before this Act incur liabilities as a trader; a contract made for the supply of goods for the purpose of trade by an infant is not voidable only, but absolutely void: *Coope* v. *Overton*, 10 Bing. 252; see *Thornton* v. *Illingworth*, 2 B. & C., at p. 826. As to fraud see *Ex parte Watson*, 16 Ves. 265; *Wright* v. *Snowe*, 2 De G. & S. 321.

Ebbett's Case, L. R. 5 Ch. 302; *Baker's Case*, L. R. 7 Ch. 115. **Who may be Partners.**

It seems clear that sect. 2 of the Infants Relief Act, 1874, applies to contracts of partnership, and consequently that no act of an infant on attaining full age, much less mere acquiescence on his part, would amount to a ratification of the original contract, so as to render him liable in respect of past obligations of the firm. It will, nevertheless, be prudent for him, if he wishes to cease to be a partner, to disaffirm the partnership expressly on attaining full age, as otherwise he will run the risk of incurring partnership liability to the creditors of the firm on the ground of his having held himself out, or permitted himself to be held out, as a partner. Infant Relief Act.

Of course, an infant partner may, on attaining full age, either by express agreement, or by implication from his conduct, enter into a fresh contract of partnership with the other members of the firm, and it is conceived that the terms of such contract will, in the absence of stipulation to the contrary, be deemed to be those of the original contract, and include the adoption of the existing liabilities of the firm. The effect of the Infants Relief Act, 1874, on the question of the election of infant partners and shareholders to hold or repudiate their shares, does not seem to have been the subject of any reported decision since the passing of that Act.

Where a minor agreed to become a partner on attaining his majority, and paid a sum of money by way of deposit to ensure the fulfilment of the contract, and nothing more was done, it was held that on attaining full age, he was entitled to repudiate the contract, and to receive back the deposit, on the ground of a failure of consideration: *Corpe* v. *Overton*, 10 Bing. 252; see *Everitt* v. *Williams*, 29 L. T., N. S. 846. But if an infant has been actually admitted a partner in consideration of payment of a premium, he cannot recover back the premium if he disaffirms the partnership on attaining his majority: *Ex parte Taylor*, 8 De G. M. & G. 254; see *Wilson* v. *Kearse*, 2 Peake, 196. Return of premium.

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Lunatics.]—It has never yet been decided what is the effect of a partnership agreement between a person actually insane at the time of the agreement being entered into, and another person who has no knowledge of the disability. On the one hand, a lunatic cannot avoid a contract which has been executed: *Molton* v. *Camroux*, 2 Exch. 487; *S. C.*, 4 Exch. 17; and, moreover, an action will lie against a lunatic for remuneration for services rendered in pursuance of a *bonâ fide* contract with him: *Baxter* v. *Earl of Portsmouth*, 5 B. & C. 170; *Brown* v. *Godrell*, 3 C. & P. 30. On the other hand, no action is maintainable against a lunatic for breach of contract by reason of his incompetency: *Waters* v. *Taylor*, 2 Ves. & B. 299; and it has been seen (*ante*, p. 202) that specific performance of a partnership agreement will not be enforced. Having regard to the consideration that mutual confidence and mutual assistance by skill and industry are generally essential to the conduct of partnership affairs, it would seem that a partnership between a lunatic and another person, though not absolutely void, would be voidable by the sane person on discovering his partner's insanity.

It is, however, fully settled that if a partnership has been entered into between two or more sane persons, and one of the partners subsequently becomes insane, this fact is not of itself sufficient to dissolve the partnership; and in such a case the lunatic partner continues entitled to his share in the profits, and liable for losses, until a dissolution is decreed by the Court, or until the expiration of the term specified in the articles for the duration of the partnership: *Sadler* v. *Lee*, 6 Beav. 324; *Anon.*, 2 K. & J. 441; *Jones* v. *Noy*, 2 My. & K. 125; and see *post*, p. 285.

Married women.

Married Women.]—Formerly married women being generally incapable of entering into contracts could not be partners; and the marriage of a female partner, *ipso facto*, effected a dissolution of the partnership: *Nerot* v. *Burnard*, 4 Russ. 260; *Wrexham* v. *Huddlestone*, 1 Swanst. 517 n. This rule was founded

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on the principle that the personal property of the female partner having become on her marriage the property of the husband, a new member would thereby be introduced into the firm : *Nerot* v. *Burnard, supra.*

Now, however, by the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), sect. 1, a married woman is capable of acquiring and holding property and of contracting as if she were a feme sole ; and she is consequently fully capable of entering into partnership with a stranger, or, as it is conceived, with her husband. Nor does there seem to be now any reason why the subsequent marriage of a female partner should dissolve the partnership, at all events if the marriage took place after the commencement of the Act, except perhaps in the case of her marrying one of her co-partners. In that case certain considerations arise, which might probably furnish ground for a dissolution of the partnership by the Court, even though the marriage might not, *ipso facto,* effect a dissolution. By sect. 1 (5) of the Act, a married woman is rendered liable to the bankruptcy laws as a feme sole, if she is "carrying on a trade *separately* from her husband" ; but in the supposed case it would seem that neither her co-partners nor the creditors of the firm could avail themselves of the bankruptcy laws in the event of her insolvency : see *Ex parte Jones,* 12 Ch. D. 484.

Moreover by sect. 3 of the Act, in case of the husband's bankruptcy, she would be postponed to all his creditors including her other co-partners, if any, in respect of any moneys advanced by her for the purpose of the business, the firm having, as has been seen (*ante,* p. 221), no existence apart from its individual members. A marriage of a female partner with one of her co-partners would therefore materially alter the rights and general position of all parties to the contract.

Corporations and Companies.]—There is no rule of law whereby corporations and companies are precluded from entering into partnerships with one another or with private individuals, or from taking

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shares in other companies, provided that they are authorised so to do by their instrument of incorporation. But very clear terms are necessary to confer such powers: *Ex parte British Nation Life Assurance Ass.*, 8 Ch. D. 704. The powers should be expressly conferred by the memorandum of association: *Re Barned's Banking Co.*, L. R. 3 Ch. 105; but the power to acquire and hold shares in another company may be implied from the nature of the business: see *Royal Bank of India's Case*, L. R. 4 Ch. 252; in the absence of express authority, however, the general rule is that it is *ultra vires* for one company to hold shares in or enter into partnership with another: *Great Western Rail. Co.* v. *Metrop. Rail. Co.*, 9 Jur., N. S. 562. See also *International Contract Co.'s Case*, 17 W. R. 454; *Re Financial Corp.*, 28 W. R. 760.

3. Illegal Partnerships and Associations.

Partnerships and associations for illegal purposes.

The general rules of law as to contracts for illegal purposes have been already fully discussed and illustrated (*ante*, sub tit. Bonds, Vol. II., pp. 308 to 341), and little remains to be said upon the particular subject of contracts of partnership or association for illegal purposes, that is to say, purposes contrary to religion, morality, or public policy, or purposes forbidden by statutory enactment.

Purposes contrary to religion, morality, or public policy.

Partnerships, &c., for the sale of blasphemous or obscene publications are illegal on the ground of their being for purposes contrary to religion and morality: see *Pace* v. *Clegg*, 29 Beav. 589; *Thornton* v. *Howe*, 1 Jur., N. S. 663. So also partnerships for deriving profit from criminal transactions, such as robbery or smuggling: see *Biggs* v. *Lawrence*, 3 T. R. 454; *Stewart* v. *Gibson*, 7 Cl. & F. 707. But see *Sharp* v. *Taylor*, 2 Ph. 801, where Lord *Cottenham* allowed a suit for obtaining contribution by partners in a smuggling transaction, for the purpose of adjusting the rights of parties after the transaction had taken place. And, on grounds of public policy, there cannot be a partnership for carrying on the business of marriage brocage; see *ante*

Vol. II., p. 319; nor for the sale of public offices: see *Sterry* v. *Clifton*, 9 C. B. 110; such purposes being contrary to public policy. And on similar grounds there cannot be a partnership with an alien enemy. Thus where two persons chartered a ship to trade at a port in a foreign country, and during the voyage war broke out between England and that country, it was held that the partnership was dissolved: *Esposito* v. *Bowden*, 7 E. & B. 763; see also *Evans* v. *Richardson*, 3 Mer. 469. But a partnership for running goods through a blockade established by a belligerent is not illegal: *Ex parte Chavasse*, 4 De G. J. & S. 655. **Illegal Partnerships, &c.**

Where any particular purpose is forbidden by any statute, with a penalty in case of disobedience, that purpose is, as a general rule, absolutely illegal, whether it be contrary to religious or moral obligations, or not: see *Aubert* v. *Maze*, 2 Bos. & P. 371. But a distinction has been taken between breaches of law founded on considerations of public policy, and of breaches of regulations merely fiscal, &c. Thus, in *Johnson* v. *Hudson*, 11 East, 180, it was held that a factor might recover the price of prize manufactured tobacco consigned to him from his correspondent at Guernsey, which was regularly entered on importation, although he had not entered himself at the Excise Office, or obtained a license as a dealer in tobacco, and although the tobacco was sent to the defendant without a permit. The Court said there was no fraud upon the revenue (upon which ground the cases as to smuggling had been decided), nor any clause making the contract of sale illegal; but, at most, it was the breach of a mere revenue regulation, which was protected by a specific penalty. So, where five persons were partners as distillers, and one of them alone, with the knowledge of his co-partners, carried on the business of a retail dealer in spirits, and within two miles of the distillery, contrary to the stat. 4 Geo. 4, c. 94, ss. 132, 133, and his name was not inserted as one of the partners in the distillery in the excise book, as required by the stat. 6 Geo. 4, c. 81, s. 7; it was held, that the five might recover the price of spirits

Purposes forbidden by statute.

Johnson v. *Hudson.*

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sold by them and might sue upon a guarantee for the due accounting of an agent to whom they had consigned the spirits for sale: *Brown* v. *Duncan*, 10 B. & C. 93; see also *Little* v. *Pool*, 9 B. & C. 192. In this class of cases the true construction of the statute seems to be that the penalty is merely a fine or premium to be paid for doing the act, or carrying on the business otherwise than according to the statutory regulations: see *Smith* v. *Mawhood*, 14 M. & W. 452.

Banking firms and companies.

Bankers.]—Banking partnerships and companies are under certain statutory restrictions.

Returns to Stamp Office.

By the Bank Charter Act, 1844 (stat. 7 & 8 Vict. c. 32, sect. 21), every banker in England and Wales is required on the 1st of January in every year, or within fifteen days thereafter, to make a return to the Stamp Office "of his name, residence, and occupation, or, in the case of a company or partnership, of the name, residence, and occupation of every person composing or being a member of such company or partnership, and also the name of the firm under which such banker, company, or partnership carry on the business of banking, and of every place where such business is carried on." The penalty for default in making such return is 50*l*.

Restrictive Statutes.

Various Acts of Parliament have been from time to time passed regulating the business of banking (*l*). Thus by the stats. 39 & 40 Geo. 3, c. 28, and 7 Geo. 4, c. 46, partnerships of more than six members were forbidden to issue in London, or within a distance of sixty-five miles from London, any bills or notes payable on demand, or to borrow money, or take up or issue bills of exchange payable at less than six months: see sects. 2, 3.

Other statutes imposing restrictions on the issue of notes, &c., by banking firms and companies are the 9 Geo. 4, c. 23; 3 & 4 Will. 4, c. 83, and 3 & 4

(*l*) As to the construction and effect of the statutory provisions here referred to, see *Broughton* v. *Manchester Waterworks Co.*, 3 B. & Al. 1; *Harvey* v. *Kay*, 9 B. & C. 365; *Bank of England* v. *Anderson*, 2 Kee. 318; *Booth* v. *Bank of England*, 7 Cl. & F. 509.

Will. 4, c. 98, and by the Bank Charter Act, 1844 (7 & 8 Vict. c. 32), sects 10, 11, no person other than a banker, who on the 6th May, 1844, was lawfully issuing his own bank notes, is to issue bank notes in any part of the United Kingdom; and no banker (unless he was on that date issuing his own bank notes under a licence) is to issue in England or Wales any bills or notes payable on demand. And by sect. 26 of the same Act banking firms consisting of more than six members carrying on business in London or within sixty-five miles thereof are empowered to draw, accept or indorse bills of exchange not payable to bearer on demand.

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Bank Charter Act, 1844.

By the Companies Act, 1862 (25 & 26 Vict. c. 89, sect. 4), no company, association, or partnership of more than ten persons is to be formed for banking purposes, unless it is registered as a company under that Act. And by sect. 205, and Sched. III., of that Act, several Acts relating to Banking Companies are repealed, except that the enactments set forth in the second part of that Schedule are re-enacted. The second part of Sched. III. is as follows:

Companies Act, 1862.

7 & 8 Vict. c. 113, *s.* 47.

Every company of more than six persons established on the sixth day of May, 1884, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the Act passed in the session holden in the seventh and eighth years of the reign of her present Majesty, chapter 113, shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such co-partnership as the nominal plaintiff, petitioner, or defendant on behalf of such co-partnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London, under the provision of an Act of Parliament passed in the seventh year of the reign of King George the fourth, chapter 46, intituled "An Act for the better regulating co-partnerships of certain bankers in England, and for amending so much of an Act of the thirty-ninth and fortieth years of the reign of his late Majesty King George the third, intituled 'An Act for establishing an agree-

Existing companies to have the power of suing and being sued.

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ment with the governor and company of the Bank of England for advancing the sum of three millions towards the supply for the service of the year 1800' as relates to the same," provided that such first-mentioned company shall make out and deliver from time to time to the commissioners of stamps and taxes the several accounts or returns required by the last-mentioned Act, and all the provisions of the last-recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited Act.

20 & 21 *Vict. c.* 49, *part of sect.* 12.

Power to form banking partnership of ten persons.

Notwithstanding anything contained in any Act passed in the session holden in the seventh and eighth years of the reign of her present Majesty, chapter 113, and intituled "An Act to regulate Joint-Stock Banks in England," or in any other Act, it shall be lawful for any number of persons not exceeding ten to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of this Act have carried on such business.

Brokers.

Brokers.]—The stats. 6 Anne, c. 16, and 57 Geo. 3, c. 60, impose certain penalties on brokers carrying on business in the City of London without having been duly admitted by the Court of Aldermen: and this enactment is not abrogated by the stat. 33 & 34 Vict. c. 60, whereby the general jurisdiction of the Court of Aldermen over London brokers is abolished. See as to brokers, *Cope* v. *Rowlands*, 2 M. & W. 149; *Smith* v. *Lindo*, 4 C. B., N. S. 395; *S. C.*, 5 Ibid. 587; *Pidgeon* v. *Burslem*, 3 Exch. 465; *Jessopp* v. *Lutwyche*, 10 Exch. 614. As to the form of bonds to be entered into by sworn brokers, see *Green* v. *Weaver*, 1 Sim. 412; *Nash* v. *Bryant*, 25 Beav. 533.

Insurance.

Insurance.]—By the stat. 30 Vict. c. 23, ss. 7, 8, and 9, a contract for marine insurance is to be in writing, and to specify the particular risk, the names of the subscribers or underwriters, and the sums insured, otherwise such policy is to be void; no policy is to be made for more than twelve months; and no policy is to be valid unless duly stamped. But by

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the stat. 39 Vict. c. 6, the policy may be stamped after execution on payment of a 100*l.* penalty. No action will lie on an unstamped policy: *Fisher* v. *Liverpool Marine Insurance Co.*, L. R. 9 Q. B. 418. A signature, *per procurationem*, by the managers of a mutual marine association is not a sufficient specification of the names of subscribers: *Ex parte Hargrove*, L. R. 10 Ch. 542. A policy for a year, to run on from year to year until notice to the contrary is given, is good as to the first year, but expires at the end of that year: *Lishman* v. *Northern Maritime Insurance Co.*, L. R. 8 C. P. 216. See further, as to the effect of the above enactment, *Smith's Case*, L. R. 4 Ch. 611; *Edwards* v. *Aberayron Mutual Society*, 1 Q. B. D. 563.

As to the necessity for registration of mutual marine insurance associations consisting of more than twenty members, see *Re Padstow, &c., Association*, 20 Ch. D. 137.

Medical practitioners.

Stat. 49 & 50 Vict. c. 48.

Medical Practitioners.]—By the Apothecaries Act, 1815, 55 Geo. 3, c. 104, sect. 21, apothecaries are prohibited from recovering any charges claimed in a court of law unless duly licensed. The Medical Act, 1886 (49 & 50 Vict. c. 48), sect. 6, empowers persons duly registered under that Act to practise medicine, surgery, and midwifery, and to recover their fees and expenses, including charges in respect of medicaments, &c., unless they are fellows of a college of physicians the bye-laws of which prohibit the recovery at law of such fees, expenses, and charges. By sect. 32 of the Medical Act, 1858 (21 & 22 Vict. c. 90), no person is now entitled to recover in any court of law for medical or surgical attendance unless he shall prove at the trial that he is duly registered under the Act; and sect. 40 inflicts penalties on persons falsely pretending to be duly qualified practitioners (*m*). To entitle a medical

Stat. 21 & 22 Vict. c. 90.

(*m*) See as to this *Ellis* v. *Kelly*, 6 H. & N. 222; *Pedgrift* v. *Chevalier*, 8 C. B., N. S. 246.

These enactments of the Act of 1858 are not affected by the Act of 1886, but the recent Act provides for the registration of colonial and foreign practitioners with recognised diplomas.

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practitioner to recover his fees, he must have been duly qualified and registered at the time of rendering the services in respect of which he claims payment, and not merely at the time of trial: *Leeman* v. *Houseley*, L. R. 10 Q. B. 66. But see *Turner* v. *Reynall*, 14 C. B. N. S. 328. A medical practitioner who is not qualified under the Medical Act, 1858, cannot recover from a duly qualified practitioner payment for his services, upon an agreement by which the former was to receive a stipulated sum for attending the patients of the latter during his absence: *De la Rosa* v. *Prieto*, 16 C. B. N. S. 578. An agreement between two persons, one of whom was duly qualified, the other being unqualified, to carry on a business together by which the latter was to practise in a manner prohibited by the Apothecaries Act, 1815, is null and void: *Davies* v. *Makuna*, 29 Ch. D. 596. But a valid partnership may be entered into between two practitioners, each of whom is registered in a different capacity, and they may sue jointly for fees due to the firm: *Turner* v. *Reynall*, 14 C. B. N. S. 328.

Pawnbrokers.

Pawnbrokers.]—The stat. 39 & 40 Geo. 3, c. 98, sect. 23, required the name of every person engaged in the trade of a pawnbroker to be painted over the door of his place of business. This Act was repealed by the Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), which, however, re-enacts this clause. In *Armstrong* v. *Armstrong*, 3 My. & K. 45, it was held that under this enactment an agreement for a secret partnership in the trade of a pawnbroker was illegal, as the names of *all* the partners must be painted up to satisfy the requirements of the Act; and the fact, that the parties uniformly dealt in such a manner as to conceal the participation of one of them, was sufficient evidence of an unlawful agreement of secresy *ab origine*, although the partnership deed contained no stipulation to that effect: see *S. C. sub nom. Armstrong* v. *Lewis*, 2 Cr. & M. 274; *Fraser* v. *Hill*, 1 M'Queen, 392; *Gordon* v. *Howden*, 10 B. & C. 93, 12 C. & F. 237.

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Solicitors.

Solicitors.]—By the stat. 6 & 7 Vict. c. 73, sect. 2, no person is to act as a solicitor unless duly admitted and enrolled: see *ante, tit.* APPRENTICESHIP, Vol. II., p. 66. Any person practising without having taken out a certificate is incapable of recovering any fee or reward for his services: sect. 26; and solicitors are forbidden to act as agents for persons not duly qualified under penalty of being struck off the roll and imprisoned: sect. 32.

Upon this and earlier statutes to a similar effect, questions have arisen whether a duly qualified solicitor might share the profits of his business with an unqualified person. It is now settled that there is no illegality in an agreement by a solicitor to make an allowance to the representatives, or widow, or children of a deceased partner out of the profits of the business: *Candler* v. *Candler*, Jac. 225; see *Sterry* v. *Clifton*, 9 C. B. 110; *Aubin* v. *Holt*, 2 K. & J. 66; *Gordon* v. *Dalzell*, 15 Beav. 351. But it is clear that an agreement made by a solicitor with an unqualified person, admitting him to partnership, is illegal, and exposes them both to the statutory penalties: *Re Jackson*, 1 B. & Cr. 270; *In re Clark*, 3 D. & Ry. 260; *Hopkinson* v. *Smith*, 7 Moo. 242; *Williams* v. *Jones*, 5 B. & C. 108; *Scott* v. *Miller*, Johns. 220. It is illegal for an unqualified person to hold himself out as a partner in a firm of solicitors, even though he may not be actively a partner: *Edmondson* v. *Davis*, 4 Esp. 14. And a declaration introduced into the agreement, that the person shall not be a partner, of course, does not prevent its having this operation: *Tench* v. *Roberts*, cit. Jac. 227.

Partnership with an unqualified person contrary to the statute.

Such agreements are sometimes made with clerks, who, it is stipulated, shall receive a certain share of profit, instead of a salary, in order to stimulate their diligence; but the expedient is attended with risk, for the Courts rigorously enforce the penalties of the statute, when a case of infringement of its provisions is brought before them. The contract, too, according to the well-known principle of law governing illegal contracts, creates no obligation on either party. One cannot

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compel the other to account for the profits of the partnership, or to contribute towards advances made, or losses and expenses incurred, in carrying it on: *Lightfoot* v. *Tenant*, 1 Bos. & P. 551; *Aubert* v. *Maze*, 1 Bos. & P. 371; *Mitchell* v. *Cockburn*, 2 H. Bl. 379; *Booth* v. *Hodgson*, 6 T. R. 405; *Langton* v. *Hughes*, 1 M. & S. 595; *Ex parte Bell*, Id. 754; *Ex parte Daniels*, 14 Ves. 191. And the application of this principle is not excluded by the circumstance that the statute in the present instance imposes a penalty only, and does not expressly prohibit or declare void the proceeding against which its penalties are directed: *Bensley* v. *Bignold*, 5 B. & Al. 335.

There is no objection to an agreement between a solicitor and his articled clerk for the admission of the latter, when duly qualified, into partnership on agreed terms: *Ex parte Joyce*, 4 Ch. D. 596. But if the agreement is on the face of it for a present partnership, parol evidence is not admissible to show that the partnership is not to commence until the clerk had been admitted a solicitor: *Williams* v. *Jones*, 5 B. & C. 108.

Partnership between solicitor and conveyancer.

Under the old Act, 22 Geo. 2, c. 46, it was held that the provisions prohibiting persons not duly qualified from practising as solicitors, rendered illegal an agreement between a solicitor and a certificated conveyancer, on the terms of the latter receiving a share of profits instead of fees for work done: *Re Jackson and Wood*, 1 B. & C. 270.

Uncertificated solicitor.

Under the same Act it was held that a solicitor who had omitted to take out his annual certificate was not an unqualified person: *Re Ross and Hodgson*, 3 A. & E. 224. And under the present Act it has been held that a qualified solicitor may act as agent on the usual terms for another solicitor who has not taken out his certificate: *Ex parte Foley*, 11 Beav. 456.

No remedies upon illegal contracts of partnership.

Consequences of Illegality.]—A contract for an illegal purpose gives no rights to either party; and therefore while the stat. 6 Geo. 1, c. 18, which prohibited persons in partnership from underwriting

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policies of marine insurance (repealed by the 5 Geo. 4, c. 114), was in force, where two persons agreed to share the risk of an insurance, one of them, paying the whole loss, was not allowed to recover contribution from the other: *Sullivan* v. *Greaves*, Park, Insur. 8; *Mitchell* v. *Cockburne*, 2 H. Bl. 379; *Aubert* v. *Maze*, 2 B. & P. 371. Nor could the insured, if he was acquainted with the fact of partnership, recover on such a contract: *Everth* v. *Blackburn*, 6 M. & S. 152; and if the partners had employed brokers to receive the premiums, they could not recover them from the brokers: *Booth* v. *Hodgson*, 6 T. R. 405; nor were the premiums recoverable from the assured or from a co-partner: *Branton* v. *Taddy*, 1 Taunt. 6; *Knowles* v. *Haughton*, 11 Ves. 168; and payments made for the purpose of being applied in such illegal assurance could not be recovered: *Ex parte Bell*, 1 M. & S. 751. See also *Lees* v. *Smith*, 7 T. R. 338; *Watts* v. *Brooks*, 3 Ves. 612.

The decisions above referred to with regard to marine insurance are still of undoubted authority, although the particular ground of illegality no longer exists: Lindley on Partnership, p. 201. There have been also many other decisions illustrating the consequences of illegality of the purposes for which partnerships and companies have been constituted.

Actions by illegal partnerships, &c.

The members of a firm engaged in illegal transactions cannot maintain any action in respect of such transactions: *Biggs* v. *Lawrence*, 3 T. R. 454. In that case a partner resident abroad was privy to the smuggling into this country of goods sold by him on account of the firm, and it was held that though his partners were not cognisant of the nature of the transaction, the price of the goods could not be recovered. So it was held, that an action for work and labour could not be maintained by a printer for printing a work which did not contain his name and place of abode as required by the stat. 39 Geo. 3, c. 27: *Bensley* v. *Bignold*, 5 B. & Al. 335; *Marchant* v. *Evans*, 2 Moo. 14; 8 Taunt. 142; *Stephens* v. *Robinson*, 2 Cr. & J. 209.

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Actions between members of illegal associations.

Generally speaking, an agreement for an illegal partnership is void, and will confer no rights on either party as against the other: *Armstrong* v. *Lewis*, 2 Cr. & M. 274; *De Beguis* v. *Armitstead*, 10 Bing. 107. So an action for an account cannot be maintained by one member of an illegal partnership against another: *Armstrong* v. *Armstrong*, 3 My. & K. 45; *Harvey* v. *Collett*, 15 Sim. 332. So also where there is an illegal association, the members cannot have as between themselves any remedy to enforce contribution or apportionment: *Holman* v. *Johnson*, 1 Cowp. 243; *Thomson* v. *Thomson*, 7 Ves. 470; *Cousins* v. *Smith*, 13 Ves. 544. See also *Evans* v. *Richardson*, 3 Mer. 409; where it was held that the Court will not recognise any alleged waiver of illegality. So in *Williams* v. *Jones*, 5 B. & C. 108, it was held that a premium paid in consideration of admission to an illegal partnership could not be recovered.

Actions against illegal associations by strangers.

A creditor cannot generally enforce his claim against an illegal partnership or company if he is *particeps criminis*, that is to say, if he is fully cognizant of the fact that the association is formed for an illegal purpose, or is intended to carry on business without complying with statutory requirements. So it was held that an obligee could not sue upon a bond for payment of money upon the formation by him of an illegal company: *Davergier* v. *Fellowes*, 1 Cl. & F. 39. And a solicitor cannot obtain a winding-up order in respect of his costs for professional services in the formation of such a company: *Re South Wales Atlantic Steamship Co.*, 2 Ch. D. 763. In that case, *James*, L.J., said that "it was impossible to say that any legal demand could be founded on such an employment:" see p. 778. But the illegality of a partnership or company does not affect the rights of third parties unless they are parties or privy to the illegality: *Sheppard* v. *Oxenford*, 1 K. & J. 491; see also *Brett* v. *Beckwith*, 3 Jur. N. S. 31; *Longworth's Executor's Case*, 1 De G. F. & J. 17.

Dissolution by reason of illegality.

If any event happens which renders the business carried on by a partnership illegal, or whereby it

becomes illegal for the members of a firm to carry on their business in partnership, such event will dissolve the partnership: see Lindley on Partnership, p. 232; and see *Esposito* v. *Bowden*, 7 E. & B. 763.

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4. Rights and Obligations of Partners.

Unrestricted responsibility to third persons incident to partnership.

One of the most important consequences of the partnership relation is the unlimited responsibility which it induces for the engagements of the firm: for, it may be stated as an universal rule, that, whatever agreement exists among the partners themselves, restrictive of the responsibility of each, and however limited may be the object or numerous the members of the partnership, each individual member of the firm is liable, to the whole extent of his property, to the joint debts: *Smith* v. *Jameson*, 5 T. R. 601; *Sandilands* v. *Marsh*, 2 B. & Al. 673; *South Carolina Bank* v. *Case*, 2 Man. & R. 459; 8 B. & Cr. 427; *Thicknesse* v. *Bromilow*, 2 Cr. & J. 431. Partnership with restricted responsibility is unknown to the law of England, in which respect our law differs from that of France and some other continental European states where such partnerships are allowed, the deeds constituting them being generally required to be registered. This doctrine of unlimited liability applies also to all trading companies, whether incorporated or not, except such as are registered as "Limited Companies" under the statutory provisions hereafter to be considered.

Special agreement negativing liability.

But the principle just noticed, of course, does not deny operation to any positive agreement made by a partner with creditors themselves; for, as the liability of a partner proceeds upon the ground of a tacit and implied contract, it may be negatived by express stipulation. If, therefore, a partner give notice to a person who has been in the habit of supplying the firm with goods, that he will be no longer answerable for such goods, he cannot be charged for goods subsequently furnished: *Vice* v. *Fleming*, 1 Y. & J. 226; see *Minnit* v. *Whinnery*, 2 Br. P. C. 323; 16 Vin. Ab. 244; *Willis* v. *Dyson*,

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1 Stark. 164. So, a person taking a bill of exchange from one partner, after notice from another that he will not be answerable, has no claim upon the latter: *Lord Galway* v. *Matthew*, 10 East, 266 (*a*). See also *Vere* v. *Ashby*, 10 B. & Cr. 288; *Ex parte Holdsworth*, 1 M. D. & De G. 475.

And where in the interval between the ordering and delivery of goods, the partnership between the parties who ordered them was dissolved, and the creditors, with notice of the dissolution, delivered the goods to the partner who carried on the trade at the usual place of business, and took a bill from him accepted in his own name, it was held that the other partner was not liable: *Ex parte Harris*, 1 Madd. 583.

Nature of liability.

At law partnership debts were regarded as joint only; so, in case of the death of a partner, the right and liability entirely survived against and for the surviving partners or partner, who could alone at law sue and be sued: *Golding* v. *Vaughan*, 2 Chit. 436. But in equity it was formerly considered that the liability of each partner was several as well as joint: *Rice* v. *Shute*, 2 W. Bl. 695; *Beresford* v. *Browning*, 1 Ch. D. 30. The principle of the decision has since been extended so as to apply to the estate of a deceased partner, the several liability of which to partnership debts was upheld by many decisions: see *Bishop* v. *Church*, 2 Ves. 100; *Simpson* v. *Vaughan*, 2 Atk. 31; *Thomas* v. *Frazer*, 3 Ves. 399; see, however, *Wilkinson* v. *Henderson*, 1 My. & K. 582. But in the recent case of *Kendall* v. *Hamilton*, 4 App. Ca. 504, this question was very fully considered in the House of Lords, and it was there laid down that as a general rule the liability of partners is, in equity, joint only and not several. In this case the liability in question was that of an actual though dormant partner, and it was held that a creditor who had recovered against the ostensible partners, could not afterwards bring a separate action against a person whom he subsequently discovered to be a partner. And in *Re McRae, Forster* v. *Davis*, 25 Ch. D. 16, the Court of Appeal held that a partnership creditor is not entitled to administration of

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a deceased partner's estate as he is not a separate creditor, either at law or in equity. In bankruptcy the general rule has long been established that the joint creditors of the firm have the first claim to payment of the partnership property; but, on the other hand, such joint creditors are not allowed to prove in competition with the separate creditors of the individual partners: *Ex parte Cook*, 2 P. Wms. 500; see *Twiss* v. *Massey*, 1 Atk. 67; *Ex parte Crowder*, 1 Vern. 706. If, however, owing to any special circumstances, such as breach of trust, the liability of the partners is several as well as joint, proof may be made against their separate estates notwithstanding that a joint judgment has been obtained against the firm on which the bankruptcy is grounded: *Ex parte Chandler*, 13 Q. B. D. 50. So also if one of the partners has given a bill of exchange to secure a debt of the partnership: see *Drake* v. *Mitchell*, 3 East. 251.

General principle.

Power of a Partner to Bind the Firm.]—It has been laid down that the existence of a partnership implies also the existence of such a relation between the partners as that each of them is a principal, and each an agent for the others: per *O'Brien*, J., in *Shaw* v. *Galt*, 16 Ir. C. L. R. 357; and this dictum was cited with approval by *Bramwell*, B., in *Holme* v. *Hammond*, L. R. 7 Ex. at p. 230. "Every partner is an agent of the partnership, and his rights, duties, and obligations are governed by the same rules and principles as those of an agent; a partner virtually embraces the character of both a principal and agent: Story on Partnership, p. 9, adopted by Lord *Wensleydale*, in *Cox* v. *Hickman*, 8 H. L. C., at p. 312. So also Lord *Westbury* says, "Partnership is a fact from which it follows in law that the partners are the accredited agents of each other in the matters of the partnership:" *Pole* v. *Leask*, 9 Jur. N. S. 829. This agency is, however, of a peculiar nature, as indicated in the passages above cited by the statement that each partner is a *principal* as well as an agent, that is to say, he acts partly for himself and partly for the others: see the observations of *Jessel*, M. R., in

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Pooley v. *Driver*, 5 Ch. D., at p. 458. The general rule is, that every partner who does any act necessary for or usually done in carrying on business of the kind carried on by the firm of which he is a member, thereby binds his partners to the same extent as if he were their agent duly appointed for that purpose; unless the partner so acting has, in fact, no authority to act for the firm in the particular matter, and the person with whom he is dealing knows that he has no authority, or (as it would seem) if such person does not know him to be a partner (*n*), "As between the partners and the outside world (whatever may be their private arrangements between themselves), each partner is the unlimited agent of every other in every matter connected with the partnership business, and not being in its nature beyond the scope of the partnership:" per *James*, L. J., in *Baird's Case*, L. R. 5 Ch., at p. 733; see also *Bullen* v. *Sharp*, L. R. 1 C. P. 86; *Mollwo* v. *Court of Wards*, L. R. 4 P. C. 419.

Authority limited to scope of business.

The acts of a partner will not, however, *primâ facie* bind the firm if they are not necessary for carrying on the partnership business in the ordinary way: *Dickinson* v. *Valpy*, 10 B. & C. 128; *Ricketts* v. *Bennett*, 4 C. B. 686; *Brettel* v. *Williams*, 4 Exch. 630. It may be laid down generally that one partner has no power to bind the firm in transactions outside the usual scope of the business of such firm: *Hasleham* v. *Young*, 5 Q. B. 205; *Stead* v. *Salt*, 3 Bing. 501. The ground of firm liability rests upon an authority given to the partner to pledge the credit of a firm in a transaction out of which the claim arises: *Smith* v. *Craven*, 1 Cr. & J. 500. This authority may be either express or may be implied from the ordinary course of business as conducted by the firm. What is, or what is not, outside the scope of any particular business, is a question of fact, not of law: see Lindley on Partnership, 239. If, however, the other partners expressly or impliedly

(*n*) This rule is stated, with some modification, from sect. 24 of the Partnerships Bill, 1883. See also Pollock on Partnership, 30; Lindley on Partnership, 236 *et seq.*

ratify the unauthorized act of their co-partner, the firm will be bound: *Crellin* v. *Brook*, 14 M. & W. 11.

As to customer's knowledge of want of authority.

The powers of a partner to bind the firm may be, as between themselves, restricted by the agreement; and an act *ultra vires* of one partner will not render his co-partners liable to a third person who has knowledge of the restriction: *Hudson* v. *Robinson*, 4 M. & S. 475. So an authority which might otherwise be implied may be negatived by notice to the contrary; so where one partner intimates to a customer that he will no longer be liable for orders in the partnership name, unless signed by him, his liability to such customer ceases as to goods otherwise ordered: *Willis* v. *Dyson*, 1 Stark, 164. But such restrictions have no effect as regards the customers of the firm generally. The inefficacy of agreements among partners themselves in restraining their general liability is well illustrated by the case of *Hawken* v. *Bourne* (8 M. & W. 703), where the action was brought for supplies furnished for the working of a mine, against a shareholder who had acted in the partnership, but of whose connexion with it the plaintiff was ignorant; the prospectus stated that all supplies were to be purchased at cash prices and that no debt was to be incurred; goods were supplied on credit, upon the order of the person who, as it was shown, was the usual agent of a mining company for such a purpose, and it was held that the defendant was liable.

As to authority of dormant partners.

A dormant partner has usually neither any apparent nor any express authority to bind the firm; it is difficult to see how such a person could have any implied authority, but such authority has not been as yet negatived by any direct decision. *Cleasby*, B., in *Holme* v. *Hammond* (L. R. 7 Ex. at p. 233), pointed out that in such cases partnership does not always imply mutual agency; his Lordship then observed: "If, indeed, a mere dormant partner were known to be a partner, and the limitations of his authority were not known, he might be able to draw bills and give orders for goods which would bind his co-partners; but in the ordinary case this

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would not be so, and he would not in the slightest degree be in a position of an agent for them."

Inasmuch as the question whether a particular act of a partner will or will not bind his co-partners depends upon whether such act is necessary for the purposes of the business, and in accordance with the usual practice of persons conducting such business it is obviously impossible to lay down any complete code of rules on the subject. Acts, such as indorsing or accepting bills of exchange, &c., are for the purposes of some businesses so necessary and of such constant occurrence that it is a recognised practice for the partners of firms engaged in such businesses to do such acts on behalf of the firm; and in such cases there is no question as to the firm being bound; but for the purpose of other businesses, such acts are not necessary or usually done by a single partner, and a different answer would probably have to be given: see *Taunton* v. *Royal Ins. Co.*, 2 H. & M. 135. It may, however, be useful here to consider briefly a few decided cases tending to elucidate this question.

Commencement of authority of partner to bind firm.

The authority of a partner to bind his co-partners arises only on the actual commencement of the partnership. So where three persons agreed to become partners in a particular adventure, and that each should contribute a certain quantity of goods to be shipped on a joint account, it was held that there was nothing in the arrangement to authorise one of the intending partners to pledge the credit of the others with respect to the part of the cargo to be contributed by himself: *Heap* v. *Dobson*, 15 C. B., N. S. 460; see *Greenslade* v. *Dower*, 7 B. & C. 635; *Dickinson* v. *Valpy*, 10 B. & C. 128; *Smith* v. *Craven*, 1 Cr. & J. 500; *Saville* v. *Robertson*, 4 T. R. 720. But a contract entered into by one of several intending partners before the commencement of the partnership, may be subsequently adopted by the other partners, in which case they will all be liable: *Dyke* v. *Brewer*, 2 C. & K. 828; *Hinton* v. *Forester*, 1 F. & F. 150.

Dissolution.

The effect of dissolution of the partnership as regards the liabilities of the members of the firm

will be considered hereafter in treating of the rights and obligations of partners after dissolution.

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A partner has no implied power to consent to a judgment against himself and his co-partners: *Hambridge* v. *De la Crouée*, 3 C. B. 472; nor to compromise an action brought against the firm: *Rathbone* v. *Drakeford*, 6 Bing. 375. And one partner cannot bind the others by consenting to a reference or submission to arbitration: "To enter into a submission to arbitration is no part of the business of an ordinary trading firm;" per *Best*, C. J., in *Stead* v. *Salt*, 3 Bing. 101; see also *Adams* v. *Bankart*, 1 C. M. & R. 681.

Consenting to judgments, &c.

Questions have frequently arisen as to how far the credit of a firm may be pledged by one of the partners drawing, indorsing, or accepting bills of exchange, or promissory notes in the firm name, or in his own name, on a bill or note in which the firm name appears. With regard to this point a distinction must be drawn between trading or commercial and other partnerships. So in *Hedley* v. *Bainbridge* (3 Q. B. 316), Lord *Denman*, C. J., said, "Partners in trade have authority as regards third persons, to bind the firm by bills of exchange, for it is the usual course of mercantile transactions so to do; but the same reason does not apply to other partnerships": see also *Harrison* v. *Jackson*, 7 T. R. 207; *Levy* v. *Pyne*, Car. & M. 453; *Yorkshire Banking Co.* v. *Beatson*, 4 C. P. D. at p. 211.

Bills of exchange, &c.

A mining company is not in this sense a trading partnership, and the manager of such a company has no implied authority to bind the firm by accepting bills of exchange in the name of the company: *Dickinson* v. *Valpy*, 10 B. & C. 128; and see *Ricketts* v. *Bennett*, 4 C. B. 686; unless it is for the purpose of paying the debts of the partnership, when such an authority is implied from the ordinary rule that partners have power to raise money to pay their firm debts; *Brown* v. *Kidger*, 3 H. & N. 853. So, also, a partner in a firm of quarry workers has no such implied authority: *Thicknesse* v. *Bromilow*, 2 Cr. & J. 425. And the same rule applies to farmers: *Greenslade* v. *Dower*, 7 B. & C. 635;

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solicitors: *Hedley* v. *Bainbridge*, 3 Q. B. 315; *Harman* v. *Johnson*, 2 E. & B. 61; and commission agents: *Yates* v. *Dalton*, 28 L. J., Ex. 69.

A trading firm is not, however, liable where a person, knowing that the partner has in fact no such authority, fills up the drawer's name which is in blank on a bill accepted in the name of the firm: *Hogarth* v. *Latham*, 8 Q. B. D. 643. On the other hand, if partners in a non-trading firm are aware that one of their number is drawing bills in the name of the firm, and applying the money to partnership purposes, they cannot repudiate liability on the ground that a partner in a non-trading business has no implied authority to draw bills in the name of the firm. *Thicknesse* v. *Bromilow*, 2 Cr. & J. 425. So, if a person take from a partner a bill of exchange, with the knowledge that he had no authority, according to the existing articles between him and his partners, to give such bill, he cannot recover against the other partners: *Lord Galway* v. *Matthew*, 10 East, 266; *Alderson* v. *Pope*, 1 Camp. 404, n. And this knowledge would be implied, where the person taking the bill knows that it was given in a transaction not connected with the partnership, as, to secure the private debt of the party giving it. If one partner gives the acceptance of the firm in discharge of his own separate debt, the presumption is that he did so without the authority of his co-partner, and it lies on the person who took the security to show that it was given with the authority of the other partner: *Leverson* v. *Lane*, 13 C. B., N. S. 278; see also *Ex parte Goulding*, 2 Gl. & J. 118; see also *Shireff* v. *Wilks*, 1 East. 48; *Ex parte Bonbonus*, 8 Ves. 540; *Wells* v. *Masterman*, 2 Esp. 731; *Swan* v. *Steel*, 7 East, 210; *Green* v. *Deakin*, 2 Stark. 347; *Elston* v. *Deacon*, L. R. 2 C. P. 20; *Garland* v. *Jacomb*, L. R. 8 Ex. 216. So, also, where the person taking the bill was expressly informed that the transaction was to be concealed from the other partners; *Arden* v. *Sharp*, 2 Esp. 523; *Jones* v. *Yates*, 9 B. & C. 532. And upon the same principle, a newly admitted partner would not be bound by a bill given by the new firm

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to secure an antecedent debt owing from the old firm: *Shirreff* v. *Wilks*, 1 East, 48; *Anderson* v. *Weston*, 8 Scott, 583; *France* v. *White*, 8 Scott, 257: see *Wilson* v. *Lewis*, 2 Scott, N. R. 115. But such a bill though given by the new firm will bind all the members of the old firm: *Spenceley* v. *Greenwood*, 1 F. & F. 297.

But if the taker of a bill or note has no notice of the fraud, he will not be affected by the fact that the bill or note was drawn, accepted, or indorsed by a partner without the authority of the firm, and not for partnership purposes: *Sutton* v. *Gregory*, 2 Peake, Add. Ca. 150; *Ridley* v. *Taylor*, 13 East, 175; *Wiseman* v. *Easton*, 8 L. T. 637. But the burden of proof is on the holder to show that he has given value for the bill or note: *Hogg* v. *Skeen*, 18 C. B., N. S. 426.

In these cases, if the bill gets into the hands of third persons, who are not affected with notice of the circumstances under which it was given, all the partners *ostensibly* constituting the firm at the time the bill was given will be bound: *Wells* v. *Masterman*, 2 Esp. 231; *Lane* v. *Williams*, 2 Vern. 277, 293; *Usher* v. *Dauncey*, 4 Camp. 97; *Grant* v. *Hawkes*, Chitt. 31. The word "ostensibly" is introduced into this position, because it has been held that a *dormant* partner is not liable on a bill given after his admission to the partnership, to secure a debt due from the firm antecedently, even in the hands of a third person; he having neither an actual nor an apparent interest; one of which circumstances is requisite to fix a partner with responsibility; and though the party taking the bill relied upon the credit of the house, yet, as he did not know that the individual in question belonged to the firm, he did not take it upon *his* credit: *Lloyd* v. *Ashby*, 2 Carr. & P. 138. See *Wilson* v. *Lewis*, 2 Scott, N. R. 115. Nor would a partner be liable to an action by a third person, for a debt contracted by the firm on the 21st of May, by the effect of a *subsequent* agreement between him and the firm, that he should be considered as a partner from the 18th of the same month, this being a mere bargain between him and his partners, of which the

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creditor is not to take advantage; the retrospective date of the partnership may affect the accounts between the partners, but not the rights of third persons: *Vere* v. *Ashby*, 10 B. & Cr. 288. The general rule, however, is, that where a partnership firm is pledged by the acceptance of a bill of exchange by one partner in the name of the firm, all the partners, whether known or secret, are bound, unless the title of the person who seeks to charge them can be impeached: *Wintle* v. *Crowther*, 2 Cr. & J. 316; *Lloyd* v. *Ashby*, 2 B. & Ad. 23.

Of course, wherever it is said that a partnership is bound by the drawing, accepting, or indorsing of a bill or note by a particular member, it is understood that if the partner signs in his own name, the instrument is drawn on the firm: *Pinkney* v. *Hall*, 1 Salk. 126; Ld. Raym. 176; *Harrison* v. *Jackson*, 7 T. R. 207; *Wells* v. *Masterman*, 2 Esp. 731; *Mason* v. *Rumsey*, 1 Camp. 384; *Dolman* v. *Orchard*, 2 Car. & P. 104. If the name of the signing partner is the name of the firm, the burden of proof is upon the plaintiff to show that the bill is the paper of the firm and not of the individual partner: see *Yorkshire Banking Co.* v. *Beatson*, 4 C. P. D. 204, where the earlier cases on the subject were reviewed. But if the name of the firm does not appear on the bill, the signing partner alone is liable on that instrument: *Siffkin* v. *Walker*, 2 Camp. 308; *Emly* v. *Lye*, 15 East, 7; *Ex parte Emly*, 1 Rose, 61. If the signing partner endorses a bill with a name resembling but not being the actual firm name, the firm will not be bound: *Kirk* v. *Blurton*, 9 M. & W. 284; *Faith* v. *Richmond*, 11 A. & E. 339. But if the names of all the individual partners, though not the firm name, appear on the bill, all the partners will be bound: *Norton* v. *Seymour*, 3 C. B. 792.

Though, as we have seen, where a person who is general partner (*o*) with another, without his autho-

(*o*) The term general partnership is used to designate a partnership extending to the general course of dealing in a trade or profession, as distinguished from a partnership in a single or particular transaction only.

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rity, subscribes the name of the firm to a note or bill, in a transaction unconnected with the partnership, the non-concurring partner is liable on the bill in the hands of an innocent holder; yet it has been ruled, that where persons are partners in a particular transaction only, and not general partners in trade, one of them is not liable even to a *bonâ fide* holder of a bill given by the other, in a matter unconnected with the joint concern: *Williams* v. *Thomas*, 6 Espin. 18; see also *Baker* v. *Charlton*, 10 B. & C. 294; *Davidson* v. *Robertson*, 3 Dow. 229.

Where several partnerships, consisting partly of the same and partly of different individuals, trade under the same name, a bill issued by one of them binds only the firm issuing it, in the hands of the party to whom it is given, and who, of course, knows the particular firm by which it was issued. But it was ruled by Lord *Kenyon* that a *bonâ fide* holder, unacquainted with this fact, might, at his option, select any one of the firms as his debtor: *Baker* v. *Charlton*, 10 B. & C. 294. Lord *Eldon* seems to have doubted this: at all events, his lordship was clearly of opinion, that the creditor could not proceed against more than one; and this, and this only, was the point *decided* by his lordship: *M'Nair* v. *Fleming*, 1 Mont. Part. 37, n. See also Lindley on Partnership, 343, 344.

Dissolution of partnership.

A bill drawn or accepted by a partner in the name of the firm after the dissolution of the partnership has been duly notified (as to which see *post*, p. 293), is not binding on the firm, although the date on the bill is previous to the dissolution: *Newsome* v. *Coles*, 2 Camp. 617; *Wright* v. *Pulham*, 2 Chit. 121. But if notice of the dissolution has not been given, the firm is liable on a bill drawn between the dates of actual dissolution and notice: *Godfrey* v. *Turnbull*, 1 Esp. 371; *Anderson* v. *Weston*, 6 Bing. N. C. 296. It seems the better opinion that a partner after dissolution duly advertised, has no power to circulate a bill drawn and accepted by the firm before dissolution, unless it is endorsed by the other partners: *Abel* v. *Sutton*, 3 Esp. 108; *Kilgour* v. *Finlyson*, 1 H. Bl. 155; see *contra*, *Lewis* v. *Reilly*, 1 Q. B. 349;

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but this decision seems to be of doubtful authority: see Lindley on Partnership, 409.

Guarantee.

The question has been much disputed whether an individual partner can bind the firm by a guarantee or undertaking to be answerable for the debt or responsibility of another. The later decisions seem to establish the rule that in order to bind the firm it must be shown that the guarantee was given in order to enable the firm to carry on its business according to its ordinary course. If so, no doubt the firm will be bound, but otherwise not; for it is not usual for merchants and traders in the common course of business to enter into engagements of this sort: see *Duncan* v. *Lowndes*, 3 Camp. 478; *Crawford* v. *Stirling*, 4 Esp. 487; *Hasleham* v. *Young*, 5 Q. B. 833; and *Brettel* v. *Williams*, 4 Ex. 623, where the point was fully considered (*p*). Of course if the other partners adopt the guarantee, they are excluded from objecting to the want of authority in the person giving it: *Sandilands* v. *Marsh*, 2 B. & Al. 673.

One partner cannot bind another by deed.

The rule is well known, that one partner cannot bind another by deed: *Harrison* v. *Jackson*, 7 T. R. 207: see also *Steiglitz* v. *Egginton*, Holt, 141; *Brutton* v. *Burton*, 1 Chit. 707. In *Ball* v. *Dunsterville*, 4 T. R. 313, indeed, a bill of sale executed by one partner on behalf of himself and another, in the presence of his co-partner, was held to be binding on both: see *Burn* v. *Burn*, 3 Ves. 578. In *Brutton* v. *Burton*, 1 Chit. 707, it was held that a warrant of attorney, under seal, executed by one partner, with the oral consent of the other, bound the latter; but the ground of the decision seems to be, that sealing was not essential to the instrument: see *Kinnersley* v. *Mussen*, 5 Taunt. 264.

Deed binding on executing partner.

It should be noticed that a deed executed by a person on behalf of himself and his partners will be binding on him, though void as to them: *Elliot* v. *Davis*, 2 Bos. & P. 338; *Hawkshaw* v. *Parkins*, 2 Swanst. 543; *Cumberlege* v. *Lawson*, 1 C. B., N. S.,

(*p*) The decisions to the contrary in *Ex parte Gordon*, 15 Ves. 286, as also the dicta of Lord *Mansfield* in *Hope* v. *Grant*, 1 East, 53, may be regarded as overruled.

709; *Latch* v. *Wedlake*, 11 A. & E. 959; but if executed by him as an individual only, and not professedly on behalf of the others, it seems he will not be bound unless the others execute, the execution of each being presumed to be upon the faith that the other partners are to be equally bound: see *Antram* v. *Chase*, 15 East, 209. Rights and Obligations of Partners.

A release by one partner of a debt due to the firm, though under seal, is conclusive against all the partners; the power to release being incidental to and included in the power to receive a debt which each partner possesses; and, in personal actions, the rule being that a release by one plaintiff operates as a release by all: *Tooker's Case*, 2 Rep. 68; 1 Roll. Ab. 410 (D); see *Hawkshaw* v. *Parkins*, 2 Swanst. 539; and one plaintiff is estopped from showing that it was given by another without consideration, or in contravention of the existing stipulations between them: *Arton* v. *Booth*, 4 Moo. 192; *Furnival* v. *Weston*, 7 Id. 356: see also *Legh* v. *Legh*, 1 Bos. & P. 447; *Stead* v. *Salt*, 10 Moo. 393. Nothing but a strong case of fraud and collusion between the debtor and the releasing partner (as, where the assignor of a bond released an action brought by the assignee in his name, *Legh* v. *Legh*, 1 Bos. & P. 447), will prevent the operation of the release: *Jones* v. *Herbert*, 7 Taunt. 421. So one partner may accept payment of money and give a valid receipt on behalf of the firm: *Henderson* v. *Wild*, 2 Camp. 561; but a mere *receipt* is not pleadable as a bar to the action, but is only a mode of proving payment; and accordingly it may be shown to have been given by one of the partners without consideration: *Skaife* v. *Jackson*, 3 B. & Cr. 421. So a receipt given by a partner fraudulently in collusion with the debtor will not bind the firm: *Farrar* v *Hutchinson*, 9 A. & E. 641. The rule that a release by one partner will bind the firm is based on the ground that as a debtor may lawfully pay his debt to one of the partners, he ought also to be able to obtain an effectual discharge on payment: see *Stead* v. *Salt*, 3 Bing. 101. Release.

A partner cannot bind the firm by setting off his private debt against a debt due to the firm: *Piercey* Set-off.

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v. *Finney*, L. R. 12 Eq. 69; *Kendal* v. *Wood*, L. R. 6 Ex. 243.

Power to take security for debt.

One partner has, it would seem, implied authority to accept security for a debt owing to the firm in the ordinary course of business: *Weikersheim's Case*, L. R. 8 Ch. at p. 835.

Release after dissolution of partnership.

When a firm is dissolved any partner may receive payment of and give a release for any debt due to the firm; for so far as regards the joint debts the partnership still continues: *Bristow* v. *Taylor*, 2 Stark. 50; *Phillips* v. *Phillips*, 3 Ha. 281, 289. And this notwithstanding an express stipulation that all debts are to be paid to one partner only: *King* v. *Smith*, 4 C. & P. 108; even though the debtor to the firm has notice of this stipulation: *Porter* v. *Taylor*, 6 M. & S. 156. It is otherwise if the debt has been assigned with the knowledge of the debtor: *Duff* v. *East India Co.*, 15 Ves. 213.

Bankruptcy or death of partner.

On the bankruptcy of a member of a firm, the solvent member can give a good discharge for a firm debt: *Ex parte Owen*, 13 Q. B. D. 113; so also can the surviving partner, on the death of his co-partner: *Brasier* v. *Hudson*, 9 Sim. 1; *Phillips* v. *Phillips*, 3 Ha. 281. See further as to releases and receipts in respect of partnership debts, Lindley on Partnership, 275, *et seq.*

Power to borrow money.

The power of a partner to borrow money on behalf of the firm rests on the principle of partnership agency (see *ante*, p. 241), by which every member of a firm has, as regards third parties, an implied authority to do all such acts as are necessary for carrying on the business of the firm in the ordinary manner: *Rothwell* v. *Humphreys*, 1 Esp. 406; *Thicknesse* v. *Bromilow*, 2 Cr. & J. 425; *Denton* v. *Rodie*, 3 Camp. 493; *Harrison* v. *Jackson*, 7 T. R. 210. This power is not, however, incidental to every business; whether or not it exists, and to what extent, depends on the nature of the particular business. "Where it is within the scope of the purposes of the partnership to borrow money, one partner has authority to borrow on behalf of the firm, and no duty is cast upon the person advancing the money to make further inquiries:" per *Black-*

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burn, J., in *Okell* v. *Eaton*, 31 L. T., N. S. 330; and see *Fisher* v. *Taylor*, 2 Ha. 218. It seems, however, that as a general rule, one partner has implied power to raise money on behalf of the firm for payment of existing partnership debts incurred in the business: see *Brown* v. *Kidger*, 3 H. & N. 853. But one partner has no authority to bind his co-partners by borrowing money unless it is borrowed in the ordinary course of business and for business purposes. So where a partner in a firm of solicitors received from a client a sum of money for investment, and instead of investing it, retained it in his own hands, giving a bond to secure its repayment, and subsequently applied the money to his own purposes, and died insolvent, it was held that the other partner was not liable: *Plumer* v. *Gregory*, L. R. 18 Eq. 621. So also where the custom of any business is that its affairs should be conducted on ready-money principles, express authority to borrow money must be shown in order to bind the firm: see *Hawtayne* v. *Bourne*, 7 M. & W. 595; *Ricketts* v. *Bennett*, 4 C. B. 686. If the lender has notice or knowledge that a partner borrowing money has no authority so to do, the firm will not be bound: *Fisher* v. *Taylor*, 2 Ha. 218; *Re Worcester Corn Exchange Co.*, 3 De G. M. & G. 180.

Where a partner borrows money on his separate credit, the mere fact that the money is applied to the purposes of the partnership business will not render the other members of the firm liable to repay the loan: *Emly* v. *Lye*, 15 East, 7; *Lloyd* v. *Freshfield*, 2 C. & P. 325. See also Lindley on Partnership, 361 *et seq.*

Banking account.

One partner has no implied power to open a banking account in his own name on behalf of the partnership, so as to bind the firm: *Alliance Bank* v. *Kearsley*, L. R. 6 C. P. 433.

Pledge of partnership property.

Where one partner has express or implied authority to borrow money on behalf of the firm, this carries with it a power to pledge the partnership property as security for the loan: *Ex parte Bonbonus*, 8 Ves. 540; *Brownrigg* v. *Rae*, 5 Ex. 489; see *Re Langmead's Trusts*, 7 De G. M. & G. 353.

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Where a pledge of partnership property is made by a member of a firm without the authority of his co-partners, the person with whom the property is pledged has a right, in the absence of fraud or collusion, to hold such property as against the other members of the firm: *Reid* v. *Hollinshead*, 4 B. & C. 867; *Raba* v. *Ryland*, Gow. 132. But if the pledgee has notice that the property so pledged is partnership property and is pledged for other than partnership purposes, the firm is not bound: *Ex parte Darlington Banking Co.*, 4 De G., J. & S. 581.

It is a fraud upon the joint creditors of a firm under the Bankruptcy Law, for partners to pledge partnership property to secure their separate debts at a time when the firm is insolvent, and such a transaction is absolutely void: *Ex parte Snowball*, L. R. 7 Ch. 534.

A surviving partner has power to pledge property of the old firm to secure a debt due from the old firm: *Bradford Commercial Co.* v. *Cure*, 31 Ch. D. 324; but not to secure a debt due from the surviving partners only: *Buckley* v. *Barber*, 6 Exch. 164.

Redemption of pledge.

One partner has an implied authority to redeem a pledge of partnership property on behalf of the firm: see *Harper* v. *Godsell*, L. R. 5 Q. B. 422.

Mortgage.

It has been seen that one partner has no implied power to bind his co-partners by deed, and consequently he cannot on their behalf execute a binding legal mortgage of partnership real estate: see *ante*, p. 250. But it would seem that he might create a valid equitable charge on such property by deposit of deeds, &c.: see Lindley on Partnership, 284.

Admissions.

An admission by one partner is evidence against all the partners: *Stead* v. *Salt*, 3 Bing. 101. This rule will apply, even though the admission is made after dissolution, if it is made with reference to a transaction which took place during the continuance of the partnership: *Wood* v. *Braddick*, 1 Taunt. 104; but one partner cannot bind his co-partner by an admission made after his entry into partnership, regarding a transaction which took place prior to that time: *Tunley* v. *Evans*, 2 D. & L. 747.

A declaration by a partner with respect to a

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transaction antecedent to the partnership is not evidence against his co-partner without further evidence to show that it was a partnership transaction: *Catt* v. *Howard*, 3 Stark. 3. In *Lucas* v. *De la Cour* (1 M. & S. 249), it was held that if a partner trades with partnership property as his own, the other partners are bound by his representations, and cannot sue with him for the price.

An admission by a person that he is a partner is not evidence against his alleged co-partners where the fact of partnership is in dispute: *Sangster* v. *Mazarredo*, 1 Stark. 161.

Partnership books.

Partnership books are evidence against partners as being declarations made by them or by their authority: *Hill* v. *Manchester Waterworks Co.*, 5 B. & Ad. 866.

Leases.

One partner has no implied authority to bind the firm by an agreement to grant a lease of partnership property: *Sharp* v. *Milligan*, 22 Beav. 606; nor to renew a lease of partnership premises, which has expired during the partnership term: *Clements* v. *Norris*, 8 Ch. D. 129; but where a lease has been granted by all the partners, notice to quit by one partner is sufficient: *Doe* v. *Summersett*, 1 B. & Ad. 135; *Goodtitle* v. *Woodward*, 3 B. & Al. 689; and any one partner may distrain, or appoint a bailiff to distrain, on behalf of the firm: *Robinson* v. *Hoffman*, 4 Bing. 562.

Purchase and sale of goods.

In the case of a trading partnership every member has an implied authority to purchase on the credit of the firm goods such as are ordinarily required for the purposes of such business, and the firm will be liable for the price, notwithstanding that the goods are converted by the partner who ordered them to his own purposes: *Bond* v. *Gibson*, 1 Camp. 185; see *Ruppell* v. *Roberts*, 4 N. & M. 31. But the firm will not be liable for goods supplied to a partner on his own credit, and contributed by him to the joint stock of the firm: *Greenslade* v. *Dower*, 7 B. & C. 635. It would seem that this power of purchasing goods on the credit of the firm is not confined strictly to trading partnerships, but will apply to any business, provided the goods supplied are necessary

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for carrying on such business : Lindley on Partnership, 291 ; and see *Wilson* v. *Whitehead*, 10 M. & W. 503 ; *Gardiner* v. *Childs*, 8 C. & P. 345.

So also each partner has power to dispose of the whole or any part of the partnership goods and chattels : *Lambert's Case*, Godb. 244 ; see *Dore* v. *Wilkinson*, 2 Stark. 287. And a solvent partner can make a good title to a *bonâ fide* purchaser for value of the partnership goods after an act of bankruptcy committed by his co-partner : *Fox* v. *Hanbury*, Cowp. 445. As to whether a surviving partner can make a good title to the share of a deceased partner in the partnership property, see *Buckley* v. *Barber*, 6 Ex. 164; and Lindley on Partnership, p. 666, note (*g*).

Varying contracts.

One partner has power to vary contracts entered into by the firm with reference to dealings in the ordinary course of business : *Leiden* v. *Lawrence*, 2 N. R. 283.

Notice.

As a general rule notice to one member of a firm is notice to all the members : *Alderson* v. *Pope*, 1 Camp. 404 n. ; and if two firms have a common member, the knowledge attributable to one of the firms is also attributable to the other, so far as relates to transactions common to the two firms : *Steele* v. *Stuart*, L. R. 2 Eq. 84 ; see *Jacaud* v. *French*, 12 East, 317 ; *Porthouse* v. *Parker*, 1 Camp. 82 ; *Powles* v. *Page*, 3 C. B. 16. But this rule only extends to cases where the partner having notice is acting within his implied authority as such with regard to the conduct of the business, and consequently has no application to cases of fraud committed against the firm with his connivance : see *Bignold* v. *Waterhouse*, 1 M. & S. 259. And the firm are not without proof of actual knowledge to be fixed with notice of a breach of trust committed by one of their number, even though the money may have been in fact applied to purposes of the partnership : *Ex parte Apsey*, 3 B. C. C. 265 ; see *Ex parte Heaton*, Buck. 386 ; *Ex parte Watson*, 2 V. & B. 414 ; *Ex parte Barnewall*, 6 De G., M. & G. 801 ; *Lacey* v. *Hill*, 5 Ch. D. 537 ; *Cleather* v. *Twisden*, 28 Ch. D. 340.

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Generally.

Mutual Rights, Duties, and Remedies of Partners.] —It is proposed to consider briefly in this place the mutual rights and duties of partners as regards the conduct of the business and affairs of the firm and how those rights may be ascertained and enforced. Such rights and duties are generally more or less completely defined by the instrument creating the partnership, but there are certain rights and duties of partners *inter se*, which, except so far as negatived or limited by express stipulation, are generally recognised by English law as incident to the partnership relation (*q*).

(*q*) The following observations of the learned authors of this work as to the mutual remedies of partners at law under the former practice are here retained for purposes of reference and illustration. Additions by the present editor are enclosed in brackets.

Actions at law between partners before the Judicature Acts.

Actions for breach of covenant or contract.

The action of account (see Co. Litt. 172, a; Fitz. N. B. 117, D.; *Godfrey* v. *Saunders*, 3 Wils. 73; Bac. Ab. *Accompt*) is quite obsolete: see *Baxter* v. *Hosier*, 2 Scott, 129; and actions of covenant for a breach of the partnership stipulations, where the partnership subsists under a deed, and of *assumpsit* where it does not were seldom brought; unless, indeed, where articles contained an agreement by one partner to pay to another a specific sum of money, as the consideration for the purchase of a share in the business or otherwise: *Walker* v. *Harris*, 1 Anstr. 245; *Venning* v. *Leckie*, 13 East, 7; see *Want* v. *Reeve*, 7 Moo. 244; *Hatcher* v. *Seaton*, 2 M. & W. 47. And one partner could not maintain an action of *assumpsit* against another, to recover a proportion of any specific sum of money which the latter might have received, or the former might have paid, on their joint account, or which might be owing to the claimant for professional services rendered to the partnership in his separate capacity: *Holmes* v. *Higgins*. 1 B. & C. 74; *Milburn* v. *Codd*, 7 Ib. 419. [See *Lucas* v. *Beach*, 1 M. & Gr. 417, and *Chadwick* v. *Clark*, 1 C. & B. 700, where it was held that a director of a company could not bring an action at law against the company for rent for the use and occupation of a house occupied by him and his co-directors.] In order to entitle him to recover in such action, there must have been a general settlement of accounts, and a balance struck: see *Foster* v. *Allanson*, 2 T. R. 479; *Fromont* v. *Coupland*, 2 Bing. 170; *Winter* v. *White*, 3 Moo. 674; 1 Br. & B. 350; *Wray* v. *Milestone*, 5 M. & W. 21; *Brierley* v. *Cripps*, 7 C. & P. 709. In the case of *Coffey* v. *Brian*, 3 Bing. 54, the plaintiff being in partnership with the defendant and J. C., the practice was for J. C. to consign goods to the defendant to sell on the joint account, which were paid for by bills drawn by J. C. on the plaintiff, who procured the defendant to give him an undertaking to provide for the bills out of the proceeds of the sales; it was held, that the plaintiff, having paid one of these bills, might

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Account.

It was formerly considered that a partner could not file a bill for an account, without praying for a

recover against the defendant in assumpsit for money had and received. So, in *Jackson* v. *Stopherd*, 2 Cr. & M. 361, where a coal-mine, in which A. and B. were partners, being worked out, it was agreed that the materials and utensils should be valued and divided, each party taking one half in value; but, after the valuation was made, B. agreed to take the whole at the valuation, and took possession accordingly; it was held, that A. might sue B. for a moiety of the value. Per *Bayley*, B.—"Upon the general rule of law there is no difficulty; one partner cannot maintain an action for a balance on the partnership account until the accounts have been settled and adjusted, and until it has been ascertained what is the balance due from the partner against whom the claim is made. But there may be special bargains by which particular transactions are insulated and separated from the winding-up of the concern, and are taken out of the general law of partnership." If an account is stated, there is no occasion for any further promise: *Wray* v. *Milestone*, 3 M. & W. 21. If a partner has advanced monies or rendered services in his separate capacity to the partnership, this merely forms an item in the general account between them; and it cannot be known, until a balance has been struck, whether anything is due to him in respect of such particular transaction. The objection to an action between partners for any specific sum, being founded on the necessity of taking an account to ascertain whether such an amount is due on the actual balance, does not apply where the sum is due independently of the state of the accounts; as where one partner has advanced money to set the concern afloat, which is to be repaid to him, at all events: *Venning* v. *Leckie*, 13 East, 7; *Ex parte Notley*, 1 M. & A. 46; *Elgie* v. *Webster*, 5 M. & W. 518.

Upon the same principle the case of *Brown* v. *Tapscott*, 6 M. & W. 119, was decided. There the plaintiff and defendant, with others, had agreed to become partners to run a steamboat between London and Margate, and the parties bound themselves to contribute in addition to their original subscriptions such further instalments, each in proportion to his subscription, as it might be necessary to call for from time to time. The expenses exceeding the earnings of the boat, a statement of the accounts was sent by the plaintiff to the defendant among others, who promised to send a further instalment, for which this action of assumpsit for money paid was brought. A verdict having been found for the plaintiff, a rule *nisi* to enter a nonsuit was discharged by the Court of Exchequer; and *Parke*, B., having read the agreement, said—"The effect of this agreement was to constitute a partnership between those who subscribed in proportion to their subscription. The plaintiff took an active part in the management of the concern, and, the earnings of the boat not proving sufficient, he paid the amount of the debts due to the different creditors; and if nothing else had been done, the plaintiff could not have recovered as for money paid to the partnership use, as one partner cannot sue

dissolution of the partnership on the ground that the Court would not interpose except in cases where it

another in that form of action for contribution to a joint partnership liability. But on this agreement the plaintiff might have sued the defendant in a special assumpsit, for not performing his undertaking to pay the plaintiff the instalments from time to time, in addition to the £10 per cent. to form a fund, as such an action would be founded on the consideration of the plaintiff, on his part, undertaking to charter and manage the vessel, as much as an action would lie on a covenant in copartnership articles by one partner to pay another a certain sum if the partnership assets should prove deficient. [See *Edger* v. *Knapp*, 6 Scott, N. R. 707; *Sedgwick* v. *Daniell*, 2 H. & N, 319.]

So, a partner may sue for work done before he became such partner: *Lucas* v. *Beach*, 1 Scott, N. R. 350.

Fraud. As to the rule, that a partner is generally bound by and answerable for the fraud of his copartner, see *Brydges* v. *Branfil*, 6 Jur. 310; *Ex parte Eyre*, Id. 41.

Trover. It may be observed, that one partner could not maintain an action of trover against another in respect of a specific chattel belonging to the partnership, (the possession of one joint tenant or tenant in common being the possession of both, *Brown* v. *Hedges*, 1 Salk. 290), unless in case of its destruction by the latter, which, being a wrongful conversion, would support the action. [But see *contra*, *Fraser* v. *Kershaw*, 2 K. & J. 496.]

Whether a partner, who has paid a joint debt, could maintain an action for contribution. It is said, however, by a learned writer, that, "in an action of *assumpsit* for money paid to his use, one partner may enforce from his copartner contribution towards a debt which the single partner may have discharged, but to which the firm was formerly liable: *Abbott* v. *Smith*, 2 W. Bl. 947; per Lord *Kenyon* in *Merryweather* v. *Nixon*, 8 T. R. 186; *Evans* v. *Yeatherd*, 2 Bing. 133;" Gow, Partn. 90. This exception to the general rule, if established, seems not to rest on very satisfactory grounds; for it is obvious, that a partner may have paid a particular debt owing by the firm, and yet be its debtor upon the general account; and the consequence of the doctrine would be very inconvenient, inasmuch as the payment of every single debt by one partner would create a distinct cause of action between the partners, which might lead to interminable litigation. Nor is the position in question, it is conceived, supported by authority; none of the cases cited by Mr. Gow bear directly upon the point. The case of *Abbott* v. *Smith* was an action by a creditor of the firm against a single partner; and it was held, that the liability of the co-contractor not having been pleaded in abatement, was no defence to the action. In *Evans* v. *Yeatherd* it was merely decided, that a person who alleged himself to be a partner with the defendant, was an incompetent witness for him, on account of his interest in the suit, because, if the plaintiff recovered a verdict, the defendant would be entitled, "either at law or *in equity*" (for such are the words of the Lord Chief Justice) to call on the witness for contribution. In the case of *Burnell* v. *Minot*, 4 Moo. 340, there was no general partnership between the plaintiff and defendant, but one

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had power to close finally by its decree all disputes between the partners: *Knabell* v. *White*, 2 Y. & C.

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had simply paid a sum of money for damages (ascertained by an arbitrator) on account of the breach of a certain joint contract entered into by them; and the Court held, that an action for contribution might be maintained, carefully avoiding the general question, which had been discussed at the bar, whether an action for money paid was maintainable by one partner against another on a joint contract. So, Lord *Kenyon's dictum* in *Merryweather* v. *Nixon* merely affirmed the right of one defendant to recover contribution against another, for damages recovered against them jointly in an action of *assumpsit*, as distinguished from an action of *tort*, and no allusion is made to the case of a trading partnership. It is obvious that, where persons are partners in a single transaction, the payment of a sum of money by one, on their joint account, might create as clear a cause of action against the other as a settled account between general partners. See *Graham* v. *Robertson*, 2 T. R. 282; *Ansell* v. *Waterhouse*, 6 Mau. & S. 390; *Wilson* v. *Cutting*, 10 Bing. 436. That the right to contribution did not exist in other cases, see Gow, Partn. 90, 3rd ed.; *Woolley* v. *Batte*, 2 Car. & P. 417; *Sadler* v. *Nixon*, 5 B. & Ad. 936; *Pearson* v. *Skelton*, 1 M. & W. 504.

Representatives of deceased partner not liable to joint engagements at law.

At law, the representatives of a deceased partner are not liable to the joint engagements of the firm, whether contracted by bond, bill, note, or otherwise; but all actions thereon must be brought against the surviving partner or partners alone. In equity, however, a partnership debt constitutes the several contract of each partner: consequently, the joint creditors have a claim upon the assets of every deceased partner for their respective demands: *Lane* v. *Williams*, 2 Vern. 277, 292; *Bishop* v. *Church*, 3 Atk. 961; 2 Ves. sen. 371; *Devaynes* v. *Noble, Sleech's Case*, 1 Mer. 563.

Contrà in Equity.

This equity arises incidentally from the right among the partners themselves to have the assets of the deceased partner applied in discharge of the joint obligations. But the principle extends only to debts contracted by the partners in the course of their joint trade, and not, as a matter of course, to engagements entered into by them *aliunde*. Thus, where A. and B., partners, entered into a joint covenant with the representatives of a deceased partner, to indemnify them against the engagements of the firm, and, on the death of A., it was attempted to fix his representatives with a proportion of the loss, on the ground that the obligation, though joint at law, yet, being by partners in trade, was several in equity; Sir *W. Grant*, M.R., held, that the surviving partner alone was liable in equity as well as at law, stating the grounds of the distinction with his usual force and clearness: *Sumner* v. *Powell*, 2 Mer. 30. This case shows the importance of making bonds or covenants by partners to third persons, several as well as joint. But the rule that a joint debt is also several in equity is not confined, as was once supposed, to mercantile transactions: see *Thorpe* v. *Jackson*, 2 Y. & C. 553.

It may be observed, that the circumstance that, in a joint bond

15; see *Forman* v. *Homfray*, 2 V. & B. 329; *Loscombe* v. *Russell*, 4 Sim. 8. But this rule has in recent times been considerably relaxed as regards its application, though the general principle underlying it still holds good. And there are now several classes of cases in which an account will be allowed without a dissolution (*r*).

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Thus, where the members of a partnership or other association are too numerous to be made parties to the action, and there has been a total or partial failure of the objects of the association, an account will be ordered although a dissolution is not asked for, for the purpose of clearing off outstanding liabilities. So in *Walworth* v. *Holt*, 4 My. & C. 619, a bill was filed by some of the shareholders of an *insolvent* joint-stock bank, on behalf of themselves and all other the shareholders of the company, except the defendants, against the directors, some of whom were bankrupt, and the trustees and public officers of the company, and certain shareholders, who were alleged to be the only shareholders who had not paid up their calls, praying that an account should be taken of all the partnership assets, and that such part as was outstanding might be got in by a receiver, and the whole converted into money, and *applied in satisfaction of the partnership debts*. A demurrer for want of equity and of parties was overruled. Lord *Cottenham*, C., observed: "When it is said that the Court cannot give relief of this limited kind, it is, I presume, meant, that the bill ought to have prayed a dissolution, and a final

Where partners are numerous.

Walworth v. *Holt*.

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or note, one of the obligors or makers is described *as surety*, is not a sufficient ground for construing it as a several bond or note as to such party: *Rawstone* v. *Parr*, 3 Russ. 424.

It will be seen from what has been said, that courts of law were ill-adapted to administer effectual justice between litigant partners, from their incapacity to unravel intricate accounts, and compel disclosures upon oath—purposes that could formerly only be effected in a court of equity; which, therefore, became the ordinary tribunal for the adjustment of partnership differences.

(*r*) All causes and matters for the dissolution of partnerships on the taking of partnership accounts are assigned to the Chancery Division of the High Court of Justice: see the Judicature Act, 1873 (36 & 37 Vict. c. 66), sect. 34.

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winding up of the affairs of the company. How far this court will interfere between partners, except in cases of dissolution, has been the subject of much difference of opinion, upon which it is not my purpose to say anything beyond what is necessary for the decision of this case, but there are strong authorities for holding that, to a bill praying a dissolution, all the partners must be parties; and this bill alleges, that they are so numerous as to make that impossible. The result, therefore, of these two rules would be—the one binding the Court to withhold its jurisdiction, except upon bills praying a dissolution, and the other requiring that all the partners should be parties to a bill praying it,—that the door of this court would be shut in all cases in which the partners or shareholders are too numerous to be made parties; which, in the present state of the transactions of mankind, would be an absolute denial of justice to a large portion of the subjects of this realm in some of the most important of their affairs. . . . It is true, that the bill does not pray for a dissolution, and that it states the company to be still subsisting, but it does not pray for an account of partnership dealings and transactions *for the purpose of obtaining the share of profits due to the plaintiffs,* which seems to be the case contemplated in the opinions to which I have referred (*s*); but its object is to have the common assets realised and applied to their legitimate purpose, in order that the plaintiffs may be relieved from the responsibility to which they are exposed, and which is contrary to the provisions of their common contract, and to every principle of justice. But, whether the interest of the plaintiffs, in right of which they sue, arises from such responsibility, or from any other cause, cannot be material; the question being, whether some partners, having an interest in the application of the partnership property, are entitled, in behalf of themselves and the other partners, except the defendants, to sue such remaining partners in this court for that pur-

(*s*) See *Mare* v. *Malachy*, 1 My. & C. 559; *Taylor* v. *Salmon*, 4 My. & C. 134.

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pose, pending the subsistence of the partnership; and if it shall appear that such a suit may be maintained by some partners, on behalf of themselves, and others similarly circumstanced, against other persons, whether trustees and agents for the company, or strangers being possessed of property of the company, it may be asked why the same right of suit should not exist when the party in possession of such property happens also to be a partner or shareholder?" See also *Cooper* v. *Webb*, 15 Sim. 454; *Clement* v. *Bowes*, 17 Sim. 167; *Sheppard* v. *Oxenford*, 1 K. & J. 491; *Apperley* v. *Page*, 1 Ph. 779.

Where a partner withholds benefit of contracts, &c., from firm.

Another class of cases in which an account will be directed, although a dissolution is not asked for, is where a partner has secured for himself by his connection with the partnership, an advantage which he endeavours to secure for himself to the exclusion of his copartners: *Carter* v. *Horne*, 1 Eq. Ab. 7; *Featherstonhaugh* v. *Fenwick*, 17 Ves. 298; and see as to companies, *Hitchens* v. *Congreve*, 1 R. & M. 150; *Beck* v. *Kantorowicz*, 3 K. & J. 230.

Attempt to exclude a partner from his rights.

Again, an account will be directed, although a dissolution is not asked for, where a partnership is for a fixed term of years and one partner seeks to exclude his copartner, or to deprive him of his share of profits, or drive him to a dissolution. So where a majority of members of a firm sold the whole concern, and some of them entered into a fresh partnership with the purchasers to carry on the business, an account was directed at the suit of the minority who had not assented to the sale: *Chapple* v. *Codell*, Jac. 537. In *Richards* v. *Davies*, 2 R. & My. 347, a partnership was constituted for a term of years which was unexpired; the plaintiffs alleged that proper accounts of the partnership dealings had not been rendered to them, and that they were excluded from the means of ascertaining the state of the partnership affairs; they asked for an account of the partnership dealings, and that the partnership might be carried on for the residue of the term, and for a receiver, &c.: Sir J. *Leach*, M. R., directed an account of past partnership transactions, refusing at the same time to make any order for carrying on

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the partnership concerns, unless with a view to a dissolution. His Honour said, "The plaintiff, for monies due to him on a partnership account, has no relief at law, and if a court of equity refuses him relief, he is wholly without remedy. This would be contrary to the plain principles of justice, and cannot be the doctrine of equity. It is objected that if such a suit be entertained, the defendant may be vexed by a new bill whenever new profits accrue; but what right has the defendant to complain of such new bill, if he repeats the injustice of withholding what is due to the plaintiff? In *Fairthorne* v. *Weston*, 3 Ha. 387, a bill was filed by a member of a firm of solicitors against his partner, alleging that the defendant by conducting himself in violation of the partnership contract, excluding the plaintiff, and applying the assets to his own use, sought to force the plaintiff to dissolve the partnership before the end of the term, and prayed an account of the partnership transactions and a receiver, but no dissolution; the defendant demurred on the ground that the plaintiff was not entitled to relief sought for except with a view to a dissolution, but the demurrer was overruled. See also *Knowles* v. *Haughton*, 11 Ves. 168; *Harrison* v. *Armitage*, 4 Madd. 143; and see as to mining partnerships, *Bentley* v. *Bates*, 4 Y. & C. 182; *Redmayne* v. *Foster*, L. R. 2 Eq. 467.

Plaintiff when ordered to pay money into Court.

Where the plaintiff, in a suit for an account and dissolution, owes a sum of money to the partnership in the shape of a private debt, he must pay it into Court as the condition of obtaining the decree: *Gold* v. *Canham*, 1 Ch. Ca. 311; 2 Swanst. 325. But he will not be ordered to pay partnership money in his hands into Court, unless the defendants will do the same; nor at all, if he insists that there is a balance in his favour, unless it appear from his admissions that he has obtained possession in a manner in which he ought not to have obtained it: *Foster* v. *Donald*, 1 J. & W. 252. See *Jervis* v. *White*, 6 Ves. 738; *Costeker* v. *Horrox*, 3 Y. & C. 530. If the defendant admits that he owes the partnership a specific debt, he may be ordered to pay that sum into Court: *Mills* v. *Hansom*, 8 Ves. 68; *Domville*

v. *Jolly*, 2 Russ. 372. But, for the purpose of paying into Court, evidence cannot be resorted to, the ground for ordering such payment must be found in the defendant's admission: *Richardson* v. *Bank of England*, 4 My. & Cr. 165. In the course of his judgment Lord *Cottenham* thus reviewed the previous decisions. "A reference to some of the cases will show how strongly the Court has felt this, and how strictly it has adhered to the rule of acting upon the defendant's admission only. In *Fox* v. *Mackreth*, 1 Ves. jun. 69, Lord *Thurlow* refused to order payment of a balance, the result of charges allowed by the Master against the defendant, after allowing all that he had claimed in discharge. In *Mills* v. *Hansom*, 8 Ves. pp. 68, 91, Lord *Eldon* refused to order payment into Court of a sum verified by affidavits to be the result of the defendant's answer, and of partnership books brought into the Master's office by the defendant, unless where the defendant had so referred in his examination to the books, as to make them as much part of it as the schedule to it. In Maddock's Ch. Pr., Vol. II., p. 400, 2nd ed., a case of —— v. *Bailey* is mentioned, in which the Court declined to act upon a stated account, the answer denying its correctness. In *Quarrell* v. *Beckford*, 14 Ves. 177, Lord *Eldon* refused to order a mortgagee in possession to pay into Court the balance appearing in the schedule to his answer, the answer saying that the defendant did not know whether anything was due to him, or what was the amount of repairs and improvements. In *Wood* v. *Downes*, 1 Ves. & B. 49, there had been a decree for an account of principal and interest. The defendant, an executor, upon his examination, admitted the principal monies, which were ordered to be paid into Court; but the Lord Chancellor declined to order the interest to be so paid, upon an affidavit of the amount. In many of these cases there was no doubt of the money being due; but the Court refused to act upon its knowledge of that fact, derived from any other source than the defendant's admission. In this case, that source of information is altogether wanting." See *Toulmin* v. *Copeland*, 3 Y. & C. 643;

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White v. *Barton*, 18 Beav. 192; *Gaskell* v. *Chambers*, 26 Beav. 360.

Account excluded by express provision in articles.

It has been seen (*ante*, p. 201) that on the expiration of a partnership term the partnership is to be considered as continued in accordance with the articles, so far as applicable to a partnership at will. And, accordingly, if the representatives of a deceased partner elect, under the articles, to take his share at a valuation as thereby agreed, they can claim such sum, even though it turns out to have been excessive: *Hogg* v. *Hogg*, 35 L. T. 792; see *Essex* v. *Essex*, 20 Beav. 442.

Contribution and indemnity.

If a member of a firm or other association properly incurs expenses or losses in respect of the debts and engagements of the firm or association, he is entitled to contribution from the other members, and to be indemnified against such expenses and losses. This right is founded on the nature of the partnership relation, whereby, as has been seen (*ante*, p. 213), each member is both a principal and agent (*t*) for the others: *Wright* v. *Hunter*, 5 Ves. 792; *Robinson's Case*, 6 De G. M. & G. 572; *Spottiswoode's Case*, ibid. 345; *Sepoy* v. *Gore*, 1 Jo. & L. 571. See further, as to contribution and indemnity, Lindley on Partnership, 753 *et seq.*

Enforcement of observance of obligations by partners.

Although, as has been seen (*ante*, p. 202), specific performance of an executory agreement for a partnership will not, as a general rule, be enforced, yet the Court will interfere when a partnership has been constituted, to compel the members to observe the terms of their contract, whether such terms are embodied in any instrument, or to be implied from the general rules of law. The following stipulations are enumerated by Lord Justice *Lindley* (Partnership, p. 917) as among those the observance of which has been enforced by the Court: (1) Not to carry on business within certain limits of distance and time: *Whittaker* v. *Howe*, 3 Beav. 383: *Turner* v. *Major*, 3 Giff. 442:—(2) As to custody and furnishing copies of partnership books: *Lingen* v. *Simpson*, 1 S. & St. 600:—(3) That debts shall be got in by a particular

(*t*) See, however, as to dormant partners, *ante*, p. 243.

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person: *Davies* v. *Amer*, 3 Drew. 64; *Turner* v. *Major, supra*:—(4) For valuation of deceased or outgoing partner's share: *Morris* v. *Kearsley*, 2 Y. & C. 139; *Essex* v. *Essex*, 20 Beav. 442:—(5) For right of pre-emption of outgoing partner's share: *Homfray* v. *Fothergill*, L. R. 1 Eq. 567:—(6) For grant of an annuity to an outgoing partner, or a deceased partner's widow: *Aubin* v. *Holt*, 2 K. & J. 66; *Page* v. *Cox*, 10 Ha. 163; *Bouville* v. *Bouville*, 4 Jur., N. S. 414:—And (7) not to divulge or make use of a trade secret: *Morison* v. *Moat*, 9 Ha. 241.

Injunction.

Formerly it appears to have been considered that the Court could not grant an injunction between partners, unless there were sufficient grounds for a dissolution, and then only as preparatory to a dissolution. But there appears to be no inflexible rule on this head, and circumstances may induce the Court to interfere by injunction to restrain a breach of the partnership articles without decreeing a dissolution: *Watney* v. *Trist*, 45 L. J. Ch. 412. See also *Hall* v. *Hall*, 12 Beav. 414; *S. C.*, on appeal, 3 Mac. & G. 85, where, though no dissolution was sought, an injunction was granted to restrain the defendant from applying any of the monies and effects of the partnership otherwise than in the ordinary business thereof, and also from obstructing or interfering with the plaintiff in the exercise of his rights under the articles. See also *Morris* v. *Coleman*, 18 Ves. 437; *Fairthorne* v. *Weston*, 3 Ha. 387; *England* v. *Curling*, 8 Beav. 129; *Homfray* v. *Fothergill*, L. R. 1 Eq. 567.

Where a dissolution is asked for the Court will grant, in a proper case, an injunction to restrain a partner from acts tending to prejudice the winding-up of the affairs of the firm, or to injure its property. So where a clause allowed drawings by each partner out of the net profits the Court, in an action for dissolution, interfered by an interim injunction to prevent one partner from drawing out of capital: *Leeman* v. *Burgen*, 34 L. T. 235. In *Charlton* v. *Poulter*, 19 Ves. 148 n., an injunction was granted to restrain the defendant from carrying away books

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and papers of the firm, and otherwise obstructing the partnership business, pending an action for a dissolution: see also *Goodman* v. *Whitcombe*, 1 Jac. & W. 589; *Taylor* v. *Davis*, 3 Beav. 388 n.; *Smith* v. *Jeyes*, 4 Beav. 503; *Greatrex* v. *Greatrex*, 1 De G. & S. 692. So also injunctions have been granted in actions for dissolution to restrain a partner from getting in the assets, if he has been guilty of misapplying them: *Hartz* v. *Schrader*, 8 Ves. 317; see *Read* v. *Bowers*, 4 Br. C. C. 441; *O'Brien* v. *Cooke*, Ir. L. R. 5 Eq. 51; also from improperly negotiating bills of exchange or promissory notes: *Jervis* v. *White*, 7 Ves. 413; *Hood* v. *Aston*, 1 Russ. 412; or from carrying on the business in the partnership name after notice of dissolution: *De Tastet* v. *Bordenave*, Jac. 516; or from acts tending to damage the property of the firm: *Turner* v. *Major*, 3 Giff. 442; *Bradbury* v. *Dickens*, 27 Beav. 53.

It was held by *Wickens*, V. C., that, after dissolution, a former partner to whom the goodwill of the business has been assigned and who continues to carry on the business may be restrained from using the name of a partner who has retired from the business: *Scott* v. *Rowland*, 26 L. T. 391; 20 W. R. 508; but see *Levy* v. *Walker*, 10 Ch. D. 436, where *James*, L.J., expressed his opinion that the assignment of the goodwill of a business carries with it the exclusive right to use the firm name. So a retiring partner who has assigned his interest in the partnership and the goodwill thereof, will be restrained from describing himself in such a manner as to lead the public to believe that he still retains any connection with the firm: *Churton* v. *Douglas*, Johns. 174; *Hookham* v. *Pottage*, L. R. 8 Ch. 91. See further as to goodwill, *post*, p. 313.

Receiver and manager when appointed.

As a rule the Court will not interfere in the management of a partnership business except on a suit for dissolution: *Const* v. *Harris*, 1 T. & R. 496, 517; *Waters* v. *Taylor*, 2 Ves. & B. 299; *S. C.*, 15 Ves. 10, 25. See also *Goodman* v. *Whitcombe*, 1 J. & W. 689. A receiver and manager will be appointed where the surviving partner is trying to

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draw away the goodwill of the old firm: *Young* v. *Buckett*, 46 L. T. 266; 30 W. R. 511. The distinction between a receiver and receiver and manager is pointed out by *Jessel*, M.R., in *Ex parte Cambrian Co.*, 14 Ch. D. 653. The Court can appoint a receiver as distinct from a receiver and manager, although no dissolution is asked for: *Medwin* v. *Ditcham*, 47 L. T. 250.

Where two persons who are partners in the produce of a mine and are also co-owners in the mine itself bring the business to a deadlock, by each insisting on his right to manage it, the Court will appoint a receiver and manager: *Jefferys* v. *Smith*, 1 Jac. & W. 298. But where one is already manager he cannot ask for a receiver and manager merely on the ground that his copartner refuses to exercise his right of interference, and actively co-operate with him in the conduct of the partnership business: *Roberts* v. *Eberhardt*, Kay, 148.

Return of premiums.

Disputes often arise between partners in cases where the partnership is brought to an end sooner than is contemplated by the agreement, as to whether a partner who has paid a sum of money to the other on the faith of the continuance of the partnership for the stipulated term is entitled to a return thereof, in whole or in part, on the ground of failure of consideration. When such payments are made at the commencement of the term, they are usually called premiums. Questions of the return of premiums depend on so many considerations that they are usually treated as matters within the discretion of the Court: *Lyon* v. *Tweddell*, 17 Ch. D. 529. This will account for the apparent conflict of the decided cases on this subject. There are, however, some general principles which seem to underlie these decisions.

Misrepresentation.

Misrepresentation is often a ground for the return of a premium. Where a person agreed to enter into a partnership, and paid a premium on the faith of certain material misrepresentations made to him by his intending partners, the agreement was rescinded and the premium was ordered to be returned: *Rawlins* v. *Wickham*, 3 De G. & J. 304.

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And where a person became a partner, having previously paid a premium on the faith of a representation that the profits of the business were twice as much as in fact they were, it was held that he was entitled to a dissolution, and to a return of half the premium paid: *Jauncey* v. *Knowles*, 29 L. J. Ch. 95. Where the partnership has been prematurely brought to an end by the misconduct of the partner who has received the premium, the Court will generally order a portion of the premium to be returned: *Berry* v. *Allen*, 1 Coll. 589; see *Astle* v. *Wright*, 23 Beav. 77; *Atwood* v. *Maude*, L. R. 3 Ch. 369.

Misconduct.

In *Wilson* v. *Johnstone*, L. R. 16 Eq. 606, *Wickens*, V.-C., said that: "In general, an incoming partner who buys with a premium a partnership for a term of years, and does not get the full benefit for which he contracted, because the partnership is prematurely dissolved by this Court, is entitled to have a portion of the premium returned." So where there was an agreement for twelve years, determinable on three months' notice by either partner, one partner to pay a premium in consideration of receiving a larger share in the profits, it was held on termination of the partnership by notice given by the partner who had received the premium, the other partner was entitled to a return of a proportional part of the premium: *Daw* v. *Rooke*, 29 W. R. 842. Of course, misconduct on the part of the partner who paid the premium will cause him to forfeit his right to a return of the premium.

Expenditure for benefit of firm.

There are also cases where the voluntary expenditure by one partner on property used for partnership purposes partakes of the nature of a premium, if the benefit accruing by reason of the expenditure depends upon the continuance of the partnership, and in such cases a return of part of the money expended has been allowed, on the premature determination of the partnership: *Burdon* v. *Barkus*, 4 De G. F. & J. 42.

Laches.

When a partnership has been dissolved by the Court, and the accounts taken, the Court will not entertain an application which might have been

made before, for a return of a premium: *Edmonds* v. *Robinson*, 29 Ch. D. 170.

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Actions by and against Partners.]—The Judicature Acts, 1873 and 1875, and the rules made under the authority of those Acts, have introduced important changes in the mode of proceeding in actions by and against partnerships and their members. These provisions will be here briefly noticed, but for a particular statement of the present procedure the reader is referred to Lindley on Partnership, 466 *et seq.*, and to the various well-known Treatises on Practice. By the Rules of the Supreme Court, 1883, Ord. XVI., it is enacted:

As to actions by and against partners.

Rule 14. "Any two or more persons claiming or being liable as copartners may sue or be sued in the name of the respective firms, if any, of which such persons were copartners at the time of the accruing of the cause of action, and any party to an action may in such case apply by summons to a judge for a statement of the names of the persons who were, at the time of the accruing of the cause of action, copartners in any such firm, to be furnished in such manner and verified on oath or otherwise as the judge may direct. Provided that in the case of a copartnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the writ of summons shall be served upon every person sought to be made liable."

Partners may sue and be sued in the name of their firms.

Rule 15. "Any person carrying on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm."

Person trading in name of firm.

By Ord. VII., rule 2, it is provided that in an action by a firm the individual partners must, if required, discover their names and addresses, under the penalty of having their action stayed, but the proceedings are to continue in the name of the firm. By Ord. IX., rules 6 and 7, in actions against a firm, or a person carrying on business in a firm name, the writ may be served either personally or at the principal place of business. And by Ord. XII., rule 16, where a person is sued in a firm name, he is to appear in his own name, but all subsequent proceedings are to be continued in the firm name.

It will be observed that these provisions merely

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enable the persons constituting firms to sue and be sued in a more convenient manner than was formerly the case; they do not operate in any way so as to incorporate partnership firms: "We have not yet introduced into our law the notion that a firm is a *persona*": per *James*, L.J., in *Ex parte Blaine*, 12 Ch. D. at p. 533.

It has not been yet decided whether under the above provisions a member of a firm may sue the firm in the firm name; or whether two firms having a common partner can sue each other. Such actions have long been maintainable in Scotland, and Lord Justice Lindley is of opinion that there is no reason why they should not now be maintained in this country: see Lindley on Partnership, 469. In support of this opinion, it is to be observed that generally in matters where before the Judicature Acts there was any conflict or variance between the rules of law and equity the rules of equity now prevail: see Judicature Act, 1873 (36 & 37 Vict. c. 66), sect. 25; and that, though formerly such actions would not lie at law, yet suits in equity were maintainable in such cases to enforce legal rights: *Piercy* v. *Fynney*, L. R. 12 Eq. 69; see *Taylor* v. *Midland Rail. Co.*, 8 H. & C. 751.

Mining company.

A mining company, though not incorporated, may now sue or be sued in the firm name: *Escott* v. *Gray*, 39 L. T. 121.

It is not unlikely that the above provisions as to partners suing and being sued in the firm name may give rise to questions of some difficulty. It was recently held by Lord *Selborne*, C., and *Brett*, L.J. (diss. *Cotton*, L.J.), that partners may be sued in the name of the firm, although the partnership has been dissolved and the firm name signifies a new partnership: *Ex parte Young*, 19 Ch. D. 124.

5. Of Partnership Property.

Joint and separate estate.

What is Partnership Property.]—As a general rule, all property which at the commencement of a partnership constitutes the common stock, and all additions thereto either by purchase or in course of

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trade, including all debts owing to the firm, are partnership property, and belong to the firm, that is to say, to all the partners: see *West* v. *Skip*, 1 Ves. Sen. 242; *Nerot* v. *Burnand*, 4 Russ. 247. Thus, the partnership property (sometimes called the partnership stock, or the joint stock, or the joint estate) will generally include all real and personal property purchased for partnership purposes out of partnership funds: *Fereday* v. *Wightwick*, 1 R. & My. 45. And if property is purchased with partnership moneys it will be presumed, in the absence of evidence to the contrary, that it was purchased for partnership purposes, and consequently that it is part of the partnership property, even though the purchase may have been made by a partner in his own name, who in such a case will be deemed a trustee for the firm: *Smith* v. *Smith*, 5 Ves. 193; *Forster* v. *Hale*, *ibid.* 308; *Morris* v. *Barrett*, 3 Y. & J. 384; *Ex parte Hinds*, 3 De G. & S. 613. So the premises on which the trade or business of a firm is carried are *primâ facie* partnership property: *Featherstonhaugh* v. *Fenwick*, 17 Ves. 508; also office furniture, plant, and utensils used in the business: *Ex parte Owen*, 4 De G. & S. 351; and book debts and stock-in-trade: *Ex parte Sheen*, L. R. 1 Ch. 421.

Property acquired by partner as such.

A partner is not entitled to obtain for himself alone any advantage by means of his connection with the firm.

Where a person obtains his opportunity of securing an advantage by the position he occupies as a partner, he is bound not to separate his interest from that of his copartners, but if he so acquired any property or other advantage, he must communicate it to them; otherwise the property so acquired will be deemed to have been acquired for the benefit of all the partners, and so become partnership property: *Hancock* v. *Heaton*, 22 W. R. 680, 784; see also *Russell* v. *Austwick*, 1 Sim. 52; *Cassels* v. *Stuart*, 6 App. Ca. 64.

So if a partner obtains for himself the renewal of a lease of the business premises, the renewed lease will *primâ facie* be partnership property; *Feather-*

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stonhaugh v. *Fenwick*, 17 Ves. 298; *Clegg* v. *Fishwick*, 1 Mac. & G. 294; *Clements* v. *Hall*, 2 De G. & J. 173. But the presumption may be rebutted: see *Burdon* v. *Barkus*, 4 De G. F. & J. 42.

So, it may be shown that an advantage acquired by a partner was not acquired in his character of partner, or that it was the intention of the parties that he should acquire the advantage for his own benefit: *Campbell* v. *Mullett*, 2 Swanst. 551; *Roberts* v. *Eberhardt*, Kay, 160; *Morris* v. *Barrett*, 3 Y. & J. 384; *Brown* v. *Oakshot*, 24 Beav. 254.

Effect of special agreement.

What could *primâ facie* be deemed to be partnership property may be shown to be the separate property of one partner, by virtue of an agreement to that effect between the partners. So if land bought with partnership moneys is conveyed to one partner under an agreement that it is to be his separate property the presumption of a trust for the firm will be negatived: *Smith* v. *Smith*, 5 Ves. 193.

Conversion of joint into separate estate, and *vice versâ*.

Conversion of Joint into Separate Estate and vice versâ.]—It is competent for partners by agreement between themselves to convert joint estate into separate estate and *vice versâ*: *Bolton* v. *Puller*, 1 Bos. & P. 539; *Ex parte Owen*, 4 De G. & S. 351. Such conversion may also be effected by implication from the conduct of the partners: *Ex parte Williams*, 11 Ves. 3.

Conversion how effected.

The conversion may be effected by a mere parol agreement, if accompanied by delivery of possession of the property intended to be converted: *Ex parte Williams*, 11 Ves. 3; *Pilling* v. *Pilling*, 3 De G. J. & S. 162; *Ex parte Rowlandson*, 1 Rose, 416.

Must be complete.

But the transfer must be complete, for so long as the agreement continues executory, the nature of the property will remain unchanged: *Ex parte Wheeler*, Buck. 25; *Ex parte Cooper*, 1 M. D. & De G. 358; *Ex parte Clarkson*, 4 D. & C. 56; *Ex parte Wood* 10 Ch. D. 554.

Must be *bonâ fide*.

A *bonâ fide* agreement for conversion on the retirement of a partner will bind the creditors of the firm, for they have no lien on the partnership property except through the partners themselves, and

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if retiring partners choose to surrender their lien (as to which see *infra*) by converting the joint into separate property, the creditors have no right, in the absence of fraud, to disturb the arrangement: *Ex parte Ruffin*, 6 Ves. 119; *Ex parte Williams*, 11 Ves. 3; see *Re Simpson*, L. R. 9 Ch. 572. But the creditors will not be bound if the transaction is tainted by fraud (*u*). So where, both the firm and the partners composing it being insolvent, an agreement was entered into whereby one of the partners purported to transfer his interest to his copartner, who undertook to pay all the firm debts, the agreement was held fraudulent and void as against the joint creditors: *Ex parte Mayou*, 4 De G. J. & S. 669. See *Luff* v. *Horner*, 3 F. & F. 480; *Re Kemptner*, L. R. 8 Eq. 287; but compare *Ex parte Walker*, 4 De G. F. & J. 509; *Ex parte Peake*, 1 Madd. 346.

Conversion on death of partner.

Conversion is frequently effected by virtue of an express stipulation in the partnership articles that, upon the death of a partner, the business shall be carried on by the survivors, and that the deceased partner's share shall be ascertained, and taken by his representatives at a valuation. As to the construction of such stipulations, see *Ex parte Morley*, L. R. 8 Ch. 1026; *Re Simpson*, L. R. 9 Ch. 571; *Ex parte Dear*, 1 Ch. D. 519; *Ex parte Butcher*, 13 Ch. D. 465.

Administration in bankruptcy.

(*u*) Questions as to the *bona fides* or otherwise of conversions frequently arise where, after the retirement of a partner, the continuing partners become insolvent, and the affairs of the firm have to be wound up in bankruptcy. The settled rule with regard to the administration of assets in bankruptcy is that "In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner is applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the separate estate in proportion to the right and interest of each partner in the joint estate": Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), sect. 40 (3). See also *Ridgway* v. *Clare*, 19 Beav. 111, where this rule is very fully considered; and *Re Simpson*, L. R. 9 Ch. 572; *Ex parte Dear*, 1 Ch. D. 514. See further on this subject, Lindley on Partnership, pp. 1083, *et seq.*; Robson on Bankruptcy, pp. 750, *et seq.*

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Nature of partner's interest in the property.

Interest of Partners in Partnership Property.]—The interest which partners have in the partnership chattels and effects has been defined to be a joint tenancy without benefit of survivorship: Wats. Partn. 65; and see *Aunand* v. *Honiwood*, Cas. Ch. 129; *Jeffreys* v. *Small*, 1 Vern. 217; Story, Partn. 121. But, to render this definition correct, the words "*inter se*" should be added to "benefit of survivorship;" for, in regard to third persons, there is survivorship between the partners. Thus, the receipt of a surviving partner is a good discharge for a payment to the firm: *Brazier* v. *Hudson*, 9 Sim. 1; *Philips* v. *Philips*, 3 Ha. 281; and a surviving partner may sue for the joint debts, without joining the representatives of the deceased partner, though he could not have sued alone, during the life of his partner: *Haig* v. *Gray*, 3 De G. & S. 741. At law, the obligation of partners survived; it was in equity only that the property of the deceased partner could be made available to the partnership engagements. These considerations, however, since the Judicature Acts have lost their former importance. It does not seem to be accurate to describe partners as tenants in common of the partnership property; for with regard to third persons, each is possessed of and has the absolute *jus disponendi* over the whole property, and not an *aliquot* share or interest only; and, *inter se*, each has a claim, not to any specific share or interest of the property *in specie*, but to the pecuniary balance which shall be found to be due to him upon the final adjustment of accounts, after the conversion of the assets, and the liquidation thereout of all claims upon the partnership: see Lord *Mansfield's* judgment in *Fox* v. *Hanbury*, Cowp. 445; and see *Doddington* v. *Hallet*, 1 Ves. 498; *Taylor* v. *Fields*, 4 Ves. 396; *Featherstonhaugh* v. *Fenwick*, 17 Ves. 298; *Darby* v. *Darby*, 3 Drew. 503; *Farquhar* v. *Hadden*, L. R. 7 Ch. 1.

The question as to whether any fiduciary obligation is imposed on a surviving partner so as to affect him in the character of a trustee was fully discussed, and occasioned some difference of judicial opinion in *Knox* v. *Gye*, L. R. 5 H. L. 656. It was, however,

decided in that case that the claim of the representatives of a deceased partner against a surviving partner is barred by the Statute of Limitations six years after the death of the deceased partner.

Partner's lien

The consequence of the joint ownership of the partnership effects is, that each partner, and his representatives, have in equity a lien (*x*) upon them for his demands in respect of the partnership, which overrides the claims of the separate creditors of the other partners: *West* v. *Skip*, 1 Ves. Sen. 242; see *Croft* v. *Pyke*, 3 P. Wms. 180; *Bucknal* v. *Rouston*, Prec. Ch. 285; *Ex parte Ruffin*, 6 Ves. 119; *Dutton* v. *Morrison*, 17 Ves. 194, 206. In *West* v. *Skip* (reported nom. *Skipp* v. *Harwood*, 2 Swanst. 586), the separate effects of two partners, and a moiety of the partnership effects (which were in his custody), were taken in execution for his separate debt, but allowed by the creditors to be used by their debtor in his trade, the transaction being intended to protect his goods from his other creditors; upon bill and cross bill for account, &c., Lord *Hardwicke* held, that the share taken in execution was liable, in the first place, to all such demands as the other partner had against the execution debtor, either at law or in equity, antecedent to the execution, but not to such demands as he might have on a separate account, nor to such as were subsequent to the execution; but as to the goods taken in execution, the partnership ended thereupon, and the creditor became a tenant in common with the other partner (*y*). See also *Heydon* v. *Heydon*, 1 Salk. 392; *Chapman* v. *Koops*, 3 B. & P. 289; *Solomon* v. *Nissen*, 2 T. R. 674.

Nature and consequences of lien.

The lien or quasi lien of each partner only takes effect when it is necessary to wind up the business, or to ascertain the share of a partner; it attaches to the partnership property for the time being, and is not affected by changes in the partnership stock:

(*x*) Equitable lien is the right to have specific property applied in discharge of particular claims. It is independent of possession, wherein it differs from possessory lien (as to which, see Vol. III. p. 640, *et seq.*), and is enforceable by sale, see Fisher on Mortgages, 138.

(*y*) The rights of execution creditors are now much curtailed by the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), sects. 45 and 46.

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West v. *Skip*, 1 Ves. 239; *Stocken* v. *Dawson*, 9 Beav. 239; see *Payne* v. *Hornby*, 25 Beav. 280. But it will only prevail to the extent of the partnership property, and to the interest of the respective partners therein; and it may be excluded expressly or impliedly from the terms of the arrangement between the parties: *Kay* v. *Johnston*, 21 Beav. 536; *Ex parte Gemmel*, 3 M. D. & De G. 198.

This lien will prevail not only against the other partners, but also all persons claiming with actual or constructive notice of the lien, through the other partners or any of them: *Cavander* v. *Bullock*, L. R. 9 Ch. 79; see also *West* v. *Skip*, 1 Ves. Sen. 239; *Stocken* v. *Dawson*, 9 Beav. 239; *Glyn* v. *Hood*, 1 De G. M. & G. 334; *Redmayne* v. *Foster*, L. R. 2 Eq. 467; *Kelly* v. *Hulton*, L. R. 3 Ch. 703. But it will not affect a *bonâ fide* purchaser or pledgee: *Re Langmead's Trusts*, 7 De G. M. & G. 353.

Loss of lien.

A partner's lien on partnership property and the interests of his copartners therein may be lost by the conversion of such property into the separate property of another partner: see *supra*. So where it was agreed that upon dissolution of a partnership, certain articles of the partnership stock should become the exclusive property of one of the partners, and that a certain fund should be appropriated for payment of the partnership debts, and the articles were accordingly handed over, but the fund afterwards proved insufficient for payment of the debts, it was held that the other partner had no lien on the articles handed over in respect of the deficiency: *Lingen* v. *Simpson*, 1 S. & St. 600; see *Re Langmead's Trusts*, 7 De G. M. & G. 353. But the lien will remain in force so long as an agreement for conversion continues executory: *Ex parte Wood*, 10 Ch. D. 554.

Partnership in profits, and not in capital.

In particular transactions, it sometimes happens that the parties are partners in the profits only of the adventure, and not in the capital or stock employed, and thus become liable as partners to the world in respect of transactions arising out of the particular adventure in the profits of which they are to participate, without acquiring any interest in the property which is the subject-matter of the

adventure: *Meyer* v. *Sharpe*, 5 Taunt. 74; *Smith* v. *Watson*, 2 B. & C. 401; *Burnell* v. *Hunt*, 5 Jur. 650; *Burdon* v. *Barkus*, 4 De G. F. & J. 42; *French* v. *Styring*, 2 C. B. (N. S.) 357. The dictum of Lord *Cairns* in *Syers* v. *Syers*, 1 App. Ca. at p. 181, that "a co-partnership in profits is a co-partnership in those assets by which the profits are made or produced," would therefore seem not to be of universal application. But this conclusion will of course yield to words in the agreement importing a joint ownership: *Reid* v. *Hollingshead*, 4 B. & C. 867. Of Partnership Property.

With respect to the relative *amounts* of the shares of partners, there is not much to be said. In the absence of any agreement to the contrary, it seems that in all cases the share in the profits will be equal, even although one party may have contributed all the capital and his labour, and the other labour only: *Peacock* v. *Peacock*, 16 Ves. 56; *Farrar* v. *Beswick*, 1 Mood. & R. 527; *Robinson* v. *Anderson*, 20 Beav. 98; *S. C.* 7 De G. M. & G. 239; see *Burnell* v. *Hunt*, 5 Jur. 650. Upon a dissolution each partner will be a creditor to the amount of the capital contributed by him; but in the absence of stipulation he will not generally have any claim for interest, but must share the entire surplus with his co-adventurers: *Boddam* v. *Riley*, 2 Br. C. C. 2; *Parsons* v. *Hayward*, 4 De G. F. & J. 474; *Wood* v. *Scales*, L. R. 4 Ch. 369; *Barfield* v. *Loughborough*, L. R. 8 Ch. 1. But where partnership articles provided that the share of a deceased partner was to be left in the business for a specified time after his death, it was held that his representatives were entitled to interest: *Spartali* v. *Constantinidi*, 20 W. R. 823; see *Jackson* v. *Jackson*, 20 L. T., N. S. 354. See also as to calculation of interest where a deceased partner's share was payable by instalments; *Orr Ewing* v. *Orr Ewing*, 8 App. Ca. 822. Amount of partner's share.

Formerly where ships were used in a partnership business they did not belong to the firm unless registered in the name of the firm, the registry being conclusive as to the equitable as well as legal ownership: *Wedderburn* v. *Wedderburn*, 4 My. & C. 46. Under the provisions of the present Merchant Ship- Ships.

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ping Acts (*y*), it is conceived that a registered partner would be deemed a trustee for the firm of a ship bought with partnership money, and used for partnership purposes: see Lind. Partn. 644.

Interest of partners in real estate.

As regards real estate or chattels real purchased with partnership funds, or for partnership purposes, and conveyed to the partners as joint tenants, the legal estate, of course, vests in the survivor, who is, in equity, as to the deceased partner's share, a trustee for his representatives: *Lake* v. *Craddock*, 3 P. W. 158; *S. C.* sub nom. *Lake* v. *Gibson*, 1 Eq. Abr. 291; see *Elliott* v. *Brown*, 3 Swanst. 489, n.; *Lyster* v. *Dolland*, 1 Ves. jun. 435; *Jackson* v. *Jackson*, 9 Ves. 596; see *Re Ryan*, L. R. Ir. 3 Eq. 222. And the same rule is applicable to property to which persons have become entitled in joint tenancy, by devise or voluntary gift, provided they enter into the trade together, and use the property for the purposes of such trade. The question in such a case is generally one of fact, viz. whether the joint dealing has been such as to convert the estate into partnership property; *Jackson* v. *Jackson*, 9 Ves. 591. Of course, if an estate be purchased out of a partnership fund, with an express agreement that it shall be considered as the exclusive property of one of the partners, to whom the conveyance is made, this will exclude the implication of a trust for the partnership, and the purchasing partner will be its debtor for the price: *Smith* v. *Smith*, 5 Ves. 193. A testator, who was a farmer, devised land to his two sons. The devisees for many years carried on their father's business upon the devised property, and kept their incomes in one common stock, to which each had access, but neither of them ever accounted to the other: and with the profits of the business they from time to time purchased other lands. It was held that the

(*y*) Stats. 17 & 18 Vict. c. 104, sects. 37, 43; 25 & 26 Vict. c. 63, sect. 3. See *ante*, tit. MORTGAGES, Vol. III., p. 831; see also *Liverpool Borough Bank* v. *Turner*, 1 J. & H. 159.

A ship may be registered in the name of a company though some of the shareholders are aliens: see 17 & 18 Vict. c. 104, sect. 18; *R.* v. *Arnaud*, 9 Q. B. 806.

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lands derived under the will were partnership property, but not the purchased lands: *Morris* v. *Barrett*, 3 Y. & J. 384.

Conversion of real estate.

In equity, a share in a partnership, whether the assets consist of real or personal property, is to be deemed, as between the real and personal representatives of the partners, to be personal estate. On this question the authorities are conflicting, but the later decisions are uniformly in favour of the personal representatives. In *Thornton* v. *Dixon*, 3 Br. C. C. 198, the principle was recognised by Lord *Thurlow* that where partners bought land for the purpose of a partnership concern, it was to be considered as part of the partnership fund, and consequently as personal estate, distributable as such; but his Lordship held that in the particular case the lands having been conveyed to the partners as tenants in common, and there being no agreement for sale, the lands would on a dissolution result as real estate. In *Bell* v. *Phyn*, 7 Ves. 453, where partners purchased a plantation with partnership moneys for the purposes of their business, and kept the accounts relating to the purchased estate in the partnership books, Sir W. *Grant*, M.R., was of opinion, that, even admitting this estate to be clearly partnership property, yet nothing having been done by the partners to alter the nature of it, he was bound, by the authority of the case of *Thornton* v. *Dixon*, to say that it was of the nature of real estate.

In the case of *Cookson* v. *Cookson*, 8 Sim. 529, a father, carrying on a trade on land which belonged to him in fee simple, took his son into partnership, and conveyed to him a share of the estate; the articles contained a covenant that the freehold hereditaments should at all times thereafter be held as partnership property, and be treated as part of the joint stock of the partnership trade according to the several shares and interests of the partners therein; Sir L. *Shadwell*, V.-C., held that the real estate was not converted into personalty on the death of the father, as it was not shown that there was any necessity for a sale of the assets for the purpose of paying the partnership debts. See also *Randall* v. *Randall*, 7 Sim. 271.

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These cases might seem to have settled the point in favour of the heir; but a contrary doctrine has since been repeatedly upheld. In the case of *Townsend* v. *Devaynes*, Mont. Partn. (in notes), 97; see also 1 Rop. Husb. & W., Jac. ed. 346, n. Lord *Eldon* decided, that real estate, purchased for partnership purposes, was impressed with the quality of personal estate, so as to belong at the death of a partner to his personal representatives. The case was shortly as follows: certain persons agreed to carry on the trade of paper-makers, in copartnership, and purchased certain freehold mills, the purchase-money being paid out of the partnership capital; the premises were made use of from the time of the purchase for the purposes of the partnership only, and the value thereof taken into, and considered as part of, their stock and capital, in stating the yearly balances; one of the partners having died, it was held that his share in the mills, or rather the sum for which it had been sold, belonged to his executors. So also his Lordship, in *Selkrig* v. *Davis*, 2 Dow. 231, declared his own individual opinion to be, "that all property involved in a partnership concern ought to be considered as personal;" and see *Nerot* v. *Burnand*, 4 Russ. 260; and the point was treated as so settled by *Leach*, M.R., in the case of *Phillips* v. *Phillips*, 1 My. & K. 649, where public-houses, which had been purchased by two brewers out of their partnership funds, and which had been conveyed to them in fee, were considered as part of the personal estate of the partners. So also in *Darby* v. *Darby*, 3 Drew, at p. 506, *Kindersley*, V.-C., laid down the broad rule that "whenever a partnership purchases real estate for the partnership purposes and with the partnership funds, it is as between the real and personal representatives of the partners personal estate." This doctrine has been adopted and followed in many subsequent cases, and may now be regarded as supported by such a preponderance of authority as to be an established rule of law: *Houghton* v. *Houghton*, 11 Sim. 191; *Broom* v. *Broom*, 3 My. & K. 433; *Bligh* v. *Brent*, 2 Y. & C. 268; *Waterer* v. *Waterer*, L. R. 15 Eq. 402; *Davis* v.

Real estate of partnership held to belong to the personal representatives of the partners.

James, 12 Ch. D. 813; *Murtagh* v. *Costello*, 7 L. R. Ir. 428. Indeed after some difference of opinion it has been laid down by the Court of Appeal, that a deceased partner's share in real estate forming partnership property is subject to probate duty: *Att.-Gen.* v. *Hubbuck*, 13 Q. B. D. 275; overruling *Custance* v. *Bradshaw*, 4 Ha. 315. Of Partnership Property.

But the general rule that a share in a partnership is to be regarded as personal estate may be excluded by express or implied agreement: *Steward* v. *Blakeway*, L. R. 4 Ch. 603; see also *Smith* v. *Smith*, 5 Ves. 189. Again, the rule will not apply where there is only a partnership in profits, but not in the ownership of the land. So in *Balmain* v. *Shore*, 8 Ves. 500, certain persons being partners as potters purchased premises to be used in the partnership business. The purchase-money was paid, not out of the partnership funds, but out of the separate property of the respective partners. On the death of one of the partners, it was held that his share in the land was to be considered as real estate. Effect of agreement.

Generally, the devotion of real estate to partnership purposes is not sufficient to make it part of the partnership stock, so as to effect its absolute conversion, unless it has been also purchased with the partnership funds, or rather perhaps, unless it is treated as partnership property; but such conversion may of course be made by express stipulation. The question, however, as to the operation and extent of stipulations of this kind is by no means of easy determination, and has not been much illustrated by decisions. In *Ripley* v. *Waterworth*, 7 Ves. 425, real estate was conveyed to trustees upon trust, upon the dissolution of the partnership, to sell the estate and apply the proceeds in payment of partnership debts, and pay the residue among the partners; and the deed contained a clause that, on the death of any partner, the survivors, or either of them, might purchase his share in the real estate, if unsold. No sale was made. On the death of one of the partners, it was held that the purchase-money was payable to his personal representatives. *Ripley* v. *Waterworth*.

Where real estate belonged to two partners as Title to be shown to

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partnership real estate on sale by personal representative.

personalty, and, upon the death of one of them, intestate, his personal representatives agreed to sell his share of the real estate to his surviving partner, and to furnish him, at their own expense, with an extract of their title to that share; it was held, that they must furnish the usual abstract of title, and not merely the letters of administration under which they claimed: *Morris* v. *Kearsley*, 2 Y. & C. 139.

6. Dissolution of Partnership.

Dissolution of partnership by death; bankruptcy; mutual agreement.

A partnership at will may be determined at any time by notice given by one of the partners to his copartner or copartners of his intention to dissolve the partnership: see *infra*. Where a partnership has been entered into for a fixed time (see *Crawford* v. *Hamilton*, 3 Mad. 251), there are various ways by which it may be dissolved—effluxion of time, the death or bankruptcy of a partner, notice given pursuant to the articles, or mutual agreement: *Vulliamy* v. *Noble*, 3 Mer. 610; *Ex parte Smith*, 5 Ves. 295; *Ex parte Williams*, 11 Ves. 5; *Fox* v. *Hanbury*, Cowp. 445; *Skip* v. *Harwood*, 2 Swanst. 586. But in no one of these cases can it be said, that to *all* intents and purposes the partnership is dissolved, for the connection still remains until the affairs are wound up: *Beak* v. *Beak*, 3 Swanst. 627.

Execution.

An execution, under which a partner's share is seized and disposed of, is also a cause of dissolution, and the vendee of the sheriff is tenant in common with the other partner: see *Skip* v. *Harwood*, 2 Swanst. 586; *Habershon* v. *Blurton*, 1 De G. & Sm. 121; *Aspinall* v. *London and North Western Rail. Co.*, 11 Ha. 325.

Marriage.

As to whether the marriage of a *feme sole* partner formerly caused a dissolution of a partnership, see *ante*, p. 226. But it seems clear that since the passing of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), sects. 1 and 2, it would not have that effect: see *ante*, p. 227.

Assignment.

The questions whether if one of the partners absolutely assign his rights in the profits to or agrees to hold them in trust for another a dissolution is effected

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have not been much considered, and must be regarded as still unsettled: see *Heath* v. *Sansum*, 4 B. & Ad. 172; *Jeffreys* v. *Smith*, 3 Russ. 158; *Cassels* v. *Stuart*, 6 App. Ca. 64. As to mortgages by partners of their shares, see *ante*, tit. MORTGAGES, Vol. III., p. 1169.

Death.

A partnership is wholly dissolved by the death of a partner, not only as to the deceased, but also as to the surviving partners: *Crawshay* v. *Collins*, 15 Ves. 228; *Ex parte Williams*, 11 Ves. 5; *Crawshay* v. *Maule*, 1 Swanst. 509. And this seems to be reasonable, for a contract to become partner with three persons does not necessarily include an agreement to continue partner with two of those three after the decease of one, confidence in whom might have been the principal inducement to the connection.

Illegality of object.

A partnership is dissolved if the object for which it is formed become illegal, or if it becomes illegal for such object to be carried on in partnership: *Esposito* v. *Bowden*, 7 E. & B. 763; and see *ante*, p. 223.

Lunacy of partner not a dissolution *per se*.

It is clear that the lunacy of a partner, *per se*, does not work a dissolution, nor does it enable the other partners, by their own act, to dissolve the partnership; to effect which recourse must be had to the Court: see *Wrexham* v. *Hudleston*, 1 Swanst. 516, n.; *Waters* v. *Taylor*, 2 Ves. & B. 303; *Sayer* v. *Bennet*, 1 Cox, 107; *Jones* v. *Noy*, 2 My. & K. 125; *Milne* v. *Bartlett*, 3 Jur. 357; *Anon.*, 2 K. & J. 441. The question of insanity, if not previously ascertained by a commission (*Milne* v. *Bartlett*, 3 Jur. 358), or satisfactorily established at the hearing, will generally be referred to the Master: *Sayer* v. *Bennet*, 1 Cox, 107; *Kirby* v. *Carr*, 3 Y. & C. 184. The Court, in the exercise of its jurisdiction, will take into its consideration the degree and probable duration of the malady with which the party is affected, and also the nature of the duties stipulated to be performed by him. The Court will decree a dissolution where a partner becomes permanently insane: *Sadler* v. *Lee*, 6 Beav. 324; *Rowlands* v. *Evans*, 30 Beav. 302; but temporary incapacity will not warrant a decree for dissolution: *Leaf* v. *Coles*, 1 De G. M. & G. 171. If the lunatic were the acting partner, the ground for dissolving the partnership is, obviously, much stronger than where

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he contributed capital only, or principally: *Sayer* v. *Bennet*, 1 Cox, 107: see also *Pearce* v. *Chamberlain*, 2 Ves. sen. 35. But in either case the lunatic would be entitled to his share of the profits, which will be distributed according to the interests of the partners until the dissolution: see *Sayer* v. *Bennet*, 1 Cox, at p. 110; *Jones* v. *Noy*, 2 My. & K. 125. Where a decree for dissolution is made on the ground of insanity, the dissolution dates from the decree, not from the commencement of the action, still less from the time when the partner became insane: *Besch* v. *Frolisch*, 1 Phil. 172. As to the jurisdiction of the Court to decree dissolution on the ground of insanity, see *Beall* v. *Smith*, L. R. 9 Ch. 85.

Upon what grounds courts of equity dissolve partnerships.

It is impossible to enumerate all the circumstances which would induce a court of equity (*z*) to dissolve a partnership; but it may be stated generally, that whatever renders it impossible that the partnership should beneficially continue, would be a ground for such a proceeding; such as the impracticability of the scheme in which the parties had engaged: *Baring* v. *Dix*, 1 Cox, 213; or if the purposes of the partnership cannot be carried into effect with any reasonable prospect of profit: *Wilson* v. *Church*, 13 Ch. D. at p. 65: see also *Jennings* v. *Baddeley*, 3 K. & J. 78; *Harrison* v. *Tennant*, 21 Beav. 482; such conduct of one of the partners as precluded the carrying on the concern under the stipulated terms: *Waters* v. *Taylor*, 2 Ves. & B. 304; *Smith* v. *Jeyes*, 4 Beav. 503; *Watney* v. *Wells*, 30 Beav. 56; but compare *Wilson* v. *Johnson*, L. R. 16 Eq. 606; or, as amounted to an entire exclusion of the other from an interest in the business: *Goodman* v. *Chitcomb*, 1 J. & W. 593; or, to a gross breach of faith between the parties: 1 Ib., at p. 594, as that of raising money for his private use on the credit of the firm: see *Marshal* v. *Coleman*, 2 J. & W. 268; *Loscombe* v. *Russell*, 4 Sim. 11; such conduct is a strong ground for appointing a receiver: *Coust* v. *Harris*, T. & R. 525. So also if a partner becomes liable to a criminal

(*z*) Causes and matters for the dissolution of partnerships are now assigned to the Chancery Division of the High Court: see sect. 34 of the Judicature Act, 1873.

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prosecution: *Essell* v. *Hayward*, 30 Beav. 158. These grounds, and many others which might be suggested, would clearly induce the Court to dissolve the partnership at the instance of any one or more of its members. But slight circumstances of misconduct, or mere difference of temper alone, are not sufficient: *Goodman* v. *Whitcomb*, 1 J. & W. 592; *Chapman* v. *Beach*, Id. 594; *Wray* v. *Hutchinson*, 2 My. & K. 235; for, as Lord *Eldon* remarked in *Goodman* v. *Whitcomb*, "where partners differ, as they sometimes do when they enter into another kind of partnership, they should recollect, that they enter into it for better and worse; and this Court has no jurisdiction to make a separation between them because one is more sullen or less good-tempered than another." Violent and lasting dissension, however, seems to be a ground upon which a court of equity will decree a dissolution; as where the parties refuse to meet each other upon matters of business—a state of things which precludes the possibility of the partnership business being conducted with advantage: *De Berenger* v. *Hammel, cor.* Sir L. *Shadwell*, V.-C., 13 Nov., 1829, M. S.; and see the observations of Lord *Cairns*, C., in *Atwood* v. *Maude*, L. R. 3 Ch., at p. 373. A partner cannot however avail himself of his own misconduct to obtain a decree for dissolution: *Fairthorne* v. *Weston*, 3 Ha. 387; see *Harrison* v. *Tennant*, 21 Beav. 482.

Partnerships at will.

It should be observed that mutual consent, or the decree of a court of equity, is only requisite to effect the dissolution of a partnership, the duration of which is fixed by express stipulation, and not of one that is indefinite in its continuance, which may be dissolved at the option of either party at any time on giving notice of intention to dissolve the partnership; and the partnership will be dissolved accordingly, as between the partners themselves, from the date of the notice: *Crawshay* v. *Maule*, 1 Swanst., at p. 508; see *Peacock* v. *Peacock*, 16 Ves. 65; *Featherstonhaugh* v. *Fenwick*, 17 Ves. 307; *Nerot* v. *Burnand*, 4 Russ. 260; *Heath* v. *Sansom*, 4 B. & Ad. 172; *Miles* v. *Thomas*, 9 Sim. 606; *Laycock* v. *Bulwer*, 13 L. J. Ex. 156; *Benham* v. *Gray*, 5 C. B. 138. As to notice of dissolution to creditors, see *infra*,

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p. 293. A valid notice to dissolve cannot be withdrawn without the consent of the other partner or partners: *Jones* v. *Lloyd*, L. R. 18 Eq. 265. The existence of engagements with third persons forms no obstacle to the exercise of this power of dissolution by either party, as the dissolution would, of course, not affect those engagements; and since partners are necessarily entering into such contracts *de die in diem*, this, if allowed to prevail, would prevent the partnership from ever being dissolved. It has been held, too, that the circumstance of the partners having, for the purposes of their trade, made a joint purchase of a leasehold property, is no evidence of an intention that the partnership shall be commensurate in duration with the leases: *Featherstonhaugh* v. *Fenwick*, 17 Ves. 308; though, unquestionably, partners *may* so purchase leaseholds as to imply such an agreement: see *Crawshay* v. *Maule*, 1 Swanst. 521.

Rule, where continuing partners trade with the deceased partner's capital.

It should be observed that, though a partnership is *ipso facto* determined by the death or bankruptcy of any one or more of its members, yet, if the surviving or continuing partners carry on the trade with the capital of the deceased or bankrupt partner, instead of converting the assets, and coming to a settlement with the executors or trustees in bankruptcy, the latter are entitled to a ratable share of the profits during the time that the capital has been so employed, partners being under an implied obligation "to use the joint property for the benefit of all whose property it is:" *Crawshay* v. *Collins*, 15 Ves. 226; 2 Russ. 325; 1 J. & W. 270; *Brown* v. *De Tastet*, Jac. 284; *Hammond* v. *Douglas*, 5 Ves. 539; *Wedderburn* v. *Wedderburn*, 4 My. & C. 53. But an allowance will be made to the surviving partner for his management: *Brown* v. *De Tastet*, Jac. 284; *Mellersh* v. *Keen*, 27 Beav. 242; unless he is the executor of the deceased partner: *Burden* v. *Burden*, 1 Ves. & B. 172; *Stocken* v. *Dawson*, 6 Beav. 371.

The extent of the liability of a partner carrying on business after the dissolution of the partnership by the death of his copartner was very fully considered by Sir J. *Wigram*, V.-C., in the case of *Willetts* v. *Blandford*, 1 Ha. 253; *S. C.*, 6 Jur. 274, when his Honour

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came to the conclusion that the mode of taking the accounts must depend upon the particular circumstances of the case: "There is no rule of this Court applicable alike to all cases of this description. The facts of each case must be under the view of the Court before it can be in a position to state what justice to the parties seeking its protection requires, due regard being had to the interests of other parties. I feel bound by authority to hold that the nature of the trade, the manner of carrying it on, the amount of capital employed, the state of the accounts between the partnership and the deceased partner at his death, and the conduct of the business after his death, may materially affect the rights of the parties."

Rights and obligations of partners after a dissolution.

When it is said that a partnership subsists after a dissolution until the affairs are wound up (*vide ante*, p. 284), the limits of this doctrine should be defined. "The expression 'to wind up the business' is very vague, and would only imply an authority to do what was strictly necessary to settle and liquidate the engagements of the concern": *per Parke*, J., in *Smith* v. *Winter*, 4 M. & W. 454. The partners, of course, continue liable to be sued as joint contractors, upon the engagements entered into during the partnership; and by parity of reasoning, they may receive and release the partnership credits, and, in short, may perform any other act in relation to pre-existing debts and credits within the scope of a partner's ordinary authority: *Ex parte Hall*, 17 Ves. 62; *Arton* v. *Booth*, 4 Moo. 192; *Bristow* v. *Taylor*, 2 Stark. 50; *Ault* v. *Goodrich*, 4 Russ. 430; *Pritchard* v. *Draper*, 1 R. & M. 195. It is now settled that if one partner goes out of a firm and another comes in, the debts of the old firm may, by the consent of all the three parties—the creditor, the old firm, and the new firm—be transferred to the new firm: *Hart* v. *Alexander*, 2 M. & W. 493. And a retiring partner may be discharged, even where no new partner is brought into the firm, if it can be shown that the creditor has agreed to accept the continuing partners as his sole debtors: *Thompson* v. *Percival*, 5 B. & Ad. 925; see *Kirwan* v. *Kirwan*,

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2 Cr. & M. 617; *Ex parte Whitmore*, 3 M. & A. 627. It was formerly considered that an agreement to discharge the retiring partner would not be supported without consideration: see *Lodge* v. *Dicas*, 3 B. & Al. 611; *David* v. *Ellice*, 5 B. & C. 196. But this doctrine may now be regarded as exploded: *Lyth* v. *Ault*, 7 Exch. 669; see also *Thompson* v. *Percival, supra.* In every case the intention of the parties must be considered, for a particular course of dealing has no technical operation by way of discharge, but is merely evidence of intention: see *Winter* v. *Innes*, 4 My. & C. 108; *Sleech's Case*, 1 Mer. 539; *Clayton's Case, ibid.* 579; *Palmer's Case, ibid.* 623; *Oakford* v. *European, &c., Ship Co.*, 1 H. & M. 182; *Braithwaite* v. *Britain*, 1 Keen. 206. But the creditor cannot sue both the old and the new firm, but must elect which he will treat as his debtors: *Scarf* v. *Jardine*, 7 App. Ca. 345. If, however, a dormant partner, of whose existence the creditor was not aware, retires, he is not discharged from his liability by the creditor treating the new firm as his debtors: *Robinson* v. *Wilkinson*, 3 Pri. 538.

If upon a change of firm the creditor takes a security from the new firm for his debt, without giving up such securities as he may have of the old firm, it seems that there is no substitution of a new for the old debt; in other words, the members of the old firm are not discharged: *Bedford* v. *Deakin*, 2 B. & Al. 210; see *Featherstone* v. *Hunt*, 1 B. & Cr. 113; *Jacomb* v. *Harwood*, 2 Ves. sen. 265; *Winter* v. *Innes*, 4 My. & C. 101; and the receipt of interest from the new firm does not afford any presumption of a discharge of the old debtors: *Daniel* v. *Cross*, 3 Ves. 277; *Gough* v. *Davies*, 4 Price, 200; *Blew* v. *Wyatt*, 5 Car. & P. 397. But the presumption is otherwise if the security is surrendered, as where the creditor gives up the bill of the old firm, and takes a fresh bill from the new firm: *Evans* v. *Drummond*, 4 Esp. 89; see *Reed* v. *White*, 5 Esp. 122; *Thompson* v. *Percival*, 3 N. & M. 167. In the case of *Oakley* v. *Pasheller*, 4 Cl. & F. 207; 10 Bligh, 548, the creditor was held under the circum-

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stances to have adopted the representatives of a deceased partner as *sureties* merely, and by subsequently giving time to the survivors to have discharged the executors. But a retiring partner cannot convert himself into a mere surety as against a creditor, by virtue of an agreement of indemnity entered into between himself and the continuing partner: *Swire* v. *Redman*, 1 Q. B. D. 536. See further as to what circumstances will or will not raise a presumption that the creditor has adopted the new firm as his debtors, so as to discharge a retiring partner on the estate of a deceased: *Featherstone* v. *Hunt*, 1 B. & C. 113; *Spenceley* v. *Greenwood*, 1 F. & F. 297; *Harris* v. *Farwell*, 15 Beav. 31; *Fergusson* v. *Fyffe*, 8 Cl. & F. 121; *Brown* v. *Gordon*, 16 Beav. 302; *Ex parte Gibson*, L. R. 4 Ch. 662; *Plumer* v. *Gregory*, L. R. 18 Eq. 621; *Simpson* v. *Henning*, L. R. 10 Q. B. 406; *Bilborough* v. *Holmes*, 5 Ch. D. 255.

Continuing contracts.

On retirement of a partner, the continuing partners are his agents to carry to completion a contract entered into before and incomplete at the time of his retirement, and he is liable for all acts done reasonably necessary to complete the contract: *Oakford* v. *European, &c., Ship Co.*, 1 H. & M. 182; see *Wood* v. *Braddick*, 1 Taunt. 105. And the liability will attach to a dormant partner, who is for this purpose in the position of an undisclosed principal: *Beckham* v. *Drake*, 11 M. & W. 315. Where a person enters into a contract to serve a firm for a definite period, and one of the partners retires, it is not to be presumed that the retiring partner is discharged from his liability under the contract, merely because such person continues to serve the remaining partners: *Dobbin* v. *Foster*, 1 C. & K. 323. In order to discharge the outgoing partner it must be shown that the servant entered into a fresh contract with the remaining partners: *Hobson* v. *Cowley*, 27 L. J. Ex. 205. But it has been held that a contract by a firm to employ an agent for a certain period is *primâ facie* determined by the death of a member of the firm: *Tasker* v. *Shepherd*, 6 H. & N. 575. Where several persons jointly entered into

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a contract, and one of them died before completion of the contract, it was held that his representatives were entitled to share in the profits, or liable to share the losses to be ascertained on completion of the contract, and not by valuation or sale of the contract before completion: *McClean* v. *Kennard*, L. R. 9 Ch. 336.

Appropriation of payments after a dissolution.

Where there is an account current between the parties, the rule is that, in the absence of any express appropriation to the contrary by either party, or of any circumstances indicating an intention to make a different appropriation, the payments made to the creditor are applied, first, in reduction of the earliest items on the debit side of the account; so that all payments, made subsequently to the retirement or death of any partner, will be applied in reduction of the balance due at his retirement, and not at all in satisfaction of any items subsequent to his retirement or death: *Clayton's Case*, 1 Mer. 605; *Toulmin* v. *Copland*, 3 Y. & C. 625; *Copland* v. *Toulmin*, 1 West, 164.

Among the circumstances which are considered as rebutting the general presumption upon which the rule in *Clayton's Case* is founded is, it seems, a payment by bills drawn in the name of the new firm, the payment of which is considered to be appropriated to the debts of the new firm: *Newmarch* v. *Clay*, 14 East, 239; see *Simpson* v. *Ingham*, 2 B. & C. 65; *Shaw* v. *Picton*, 4 B. & C. 715; *Waters* v. *Tompkins*, 2 C. M. & R. 723; *Brooke* v. *Enderby*, 4 Moo. 501; *Bank of Scotland* v. *Christie*, 8 Cl. & F. 214; *Hooper* v. *Keay*, 1 Q. B. D. 178.

After a dissolution, the parties cannot bring any new obligation upon each other: see *Pinder* v. *Wilks*, 5 Taunt. 612; 1 Marsh. 248; and, therefore, an acceptance given by one of the late partners on behalf of both, though for a partnership debt, will not bind the non-concurring partner: *Dolman* v. *Orchard*, 2 C. & P. 104; *Anderson* v. *Weston*, 6 Bing. N. C. 296. Nor will a cognovit given by one of such partners for the debt and costs bind the other: *Rathbone* v. *Drakeford*, 4 Moo. & P. 57. And an arrangement that one of the partners shall settle

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the debts and credits of the partnership, does not, it seems, invest him with an implied authority to give bills in the names of himself and his late partners, for a partnership debt; such an arrangement, in fact, confers on him no authority which did not belong to him as partner: *Abel* v. *Sutton*, 3 Esp. 108. See also *Kilgour* v. *Finlyson*, 1 H. Bl. 155; *Wilson* v. *Barthrop*, 2 M. & W. 863. But a parol authority to use the partnership name has been held to extend to the indorsing of promissory notes left in the acting partner's hands: *Smith* v. *Winter*, 4 M. & W. 454.

Set-off as between partners.

A guarantee upon which no liability has occurred cannot be set off against a debt; and, therefore, where a partner on a dissolution agreed to pay to his co-partners a certain sum, as his share of the joint liabilities, in consideration of which they agreed to pay a certain debt due from the firm to H., it was held in an action by the assignees of the guarantors for the former sum, that the defendant could not set off the unpaid debt to A.: *Abbott* v. *Hicks*, 7 Scott, 715; see *Jones* v. *Yates*, 9 B. & C. 533; *Leverson* v. *Lane*, 13 C. B., N. S. 278; *Kendal* v. *Wood*, L. R. 6 Ex. 243; *Piercey* v. *Fynney*, L. R. 12 Eq. 69; *Jebson* v. *East and West India Dock Co.*, L. R. 10 C. P. 300.

What notice of dissolution requisite.

As to advertisements in the London Gazette.

Persons who have been once openly partners continue to stand in that relation to each other in regard to transactions with the world, until the dissolution of their connection has been properly announced; and the ordinary and well-known mode of making this announcement is by an advertisement in the "London Gazette," which is sufficient notice of the fact to the public at large: *Godfrey* v. *Turnbull*, 1 Esp. 371; *Wright* v. *Pulham*, 2 Chitt. 121; 1 Stark. 375; and see *Leeson* v. *Holt*, 1 Stark. 186; *Munn* v. *Baker*, 2 Id. 255; but the correspondents of the house are entitled to a more distinct and particular intimation: *Graham* v. *Hope*, Peake, 154; *Ex parte Burton*, 1 Gl. & J. 207; *Ex parte Leaf*, 1 Deac. 176; *Farrar* v. *Deflime*, 1 C. & K. 580. To them, therefore, a circular letter is usually sent announcing the dissolution: see *Barfoot* v. *Goodall*, 3

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Camp. at p. 149; *Jenkins* v. *Blizard*, 1 Stark. 419. This being done, a seceding partner would be safe, even if his name were, without his authority, continued in the firm; for, after having used the requisite means of notifying the dissolution, he is not bound to apply for an injunction to prevent the improper retention of his name by the continuing partners: *Newsome* v. *Coles*, 2 Camp. 617. But notice in the Gazette does not exempt persons dissolving partnership from the necessity of using other reasonable precautions to prevent the public from inferring a continuance of the partnership. And, therefore, a person allowing his name to remain over the door of the late firm, continues liable, notwithstanding the advertisement of the dissolution in the Gazette: *Williams* v. *Keats*, 2 Stark. 290; *Dolman* v. *Orchard*, 2 C. & P. 104. But, where a partner notoriously withdraws his name from a firm, his liability is not continued by the circumstance that the deed by which he has professed to assign his share is void for a technical informality: *M'Iver* v. *Humble*, 16 East, 174. If knowledge of the dissolution can be brought home to the creditor, proof of a general public notice is, as to him, unnecessary; and if he could be proved to have been aware of an intention to dissolve, this would throw on him the *onus* of showing that such intention was abandoned: *Paterson* v. *Zachariah*, 1 Stark. 71. But, where a seceding partner's name is continued in the firm by express agreement, he will be liable to persons acquainted with the fact of the dissolution under those circumstances, inasmuch as such an agreement implies an undertaking to continue responsible for the engagements of the firm: *Brown* v. *Leonard*, 2 Chit. 121. The question in every case is, whether the circumstances are such as to afford reasonable ground for a jury to infer the party's knowledge of the fact of the dissolution: *Parkin* v. *Carruthers*, 3 Esp. 248. The alteration of the cheques of a banking-house would clearly be sufficient evidence of a change in the firm to persons using those cheques: *Barfoot* v. *Goodall*, 3 Camp. 147. The

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insertion of an advertisement of the dissolution in a newspaper other than the Gazette is no evidence, unless it can be shown that the party read the paper: *Leeson* v. *Holt*, 1 Stark. 186; *Boydell* v. *Drummond*, 11 East, 144, n. But evidence that the party was in the habit of taking in the newspaper is evidence for the jury of his having seen the advertisement, so as to discharge the partner as to such party, unless he were a correspondent of the firm, although no notice is inserted in the Gazette: *Jenkins* v. *Blizard*, 1 Stark. 419; *Rooth* v. *Quin*, 7 Pri. 193.

Stamp.

It may be observed, that a notice of an actual dissolution in the Gazette may be given in evidence without an agreement stamp: *Jenkins* v. *Blizard*, 1 Stark. 418; but not so notice of an agreement to dissolve: see *May* v. *Smith*, 1 Esp. 283.

Notice of dissolution not requisite as to a secret partner.

The necessity of notice of partnership having been dissolved, does not exist on the secession of a partner whose connection with the concern has never been known to the public: *Brooke* v. *Enderby*, 4 Moo. 501; *Heath* v. *Sansom*, 4 B. & Ad. 177. But, even in this case, it is usual and more safe to insert an advertisement in the Gazette, for the effect of the existence of the partnership may have been inadvertently divulged, though it was not notorious; and proof of its being partially known among third persons would, it should seem, be sufficient to charge the seceding partner, without bringing the knowledge of it home to the plaintiff: *Evans* v. *Drummond*, 4 Esp. 89; see *Carter* v. *Whalley*, 1 B. & Ad. 11; *Jones* v. *Shears*, 4 Ad. & E. 832; *Farrar* v. *Deflime*, 1 C. & K. 580.

Nor in case of dissolution by death.

Where a partnership is dissolved by death, no notice is requisite in order to prevent the representatives of the deceased partner from being liable to the engagements of the surviving partners: *Vulliamy* v. *Noble*, 3 Mer. 614; *Webster* v. *Webster*, 3 Swanst. 490, n. If, however, a surviving partner is executor of a deceased partner, and deals with the customers of the firm in the latter character, the case would, it seems, be different; for, as executor, he has a right to bind the testator's estate

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As to responsibility of the representatives of a deceased partner.

see *Devaynes* v. *Noble*, 1 Mer. 616; *Vulliamy* v. *Noble*, 3 Mer. 614. The estate of a deceased partner is, of course, liable in equity for all the engagements of the house existing at the time of his decease; and this liability is not discharged by a continued course of dealing on the part of the creditor with the surviving partners, indicating a reliance upon their responsibility; and, therefore, if the customer of a bank, to whom a balance was due at the decease of a partner, continues to keep an account with the house, drawing cheques, depositing cash, &c., the deceased partner's estate is not thereby discharged from so much of the balance as, in the course of such transactions, remained unliquidated; though, by the general rule, the payments subsequently made by the house would go in reduction of that balance: *Gough* v. *Davies*, 4 Pri. 200; *Devaynes* v. *Noble*, 1 Mer. 568, 586; *David* v. *Ellis*, 1 Car. & P. 368.

7. Of Articles of Partnership.

Inconveniences attendant on oral partnership agreements.

The mutual rights and obligations of partners are usually regulated by written agreements called articles of partnership. Many of the clauses usually inserted in such instruments do no more than express the obligations legally incident to the partnership relation; but they are not on this account wholly useless, as they draw the attention of the parties to the duties which they contract in becoming partners, and therefore are calculated to prevent misunderstanding. The advantage of having a written instrument to resort to, in order to ascertain the intentions of the parties, is obvious; and cases not unfrequently occur which signally illustrate the danger and folly of persons entering into partnership under merely oral agreements; though such, it is strange to say, is the situation of not a few considerable mercantile establishments. The fact seems to be, that so large a degree of confidence is requisite in forming the partnership connection, even with all the security that is to be derived from the most carefully framed instrument, that it requires no great extension of

that confidence to forego entirely this species of protection. But though this may account for, it does not justify, the neglect; as the inevitable magnitude of a risk surely affords no reasonable ground for unnecessarily extending it.

General remarks on the preparation of partnership articles.

In drawing partnership articles it is important to bear in mind that they are intended for the guidance of persons engaged in trade or business, who are for the most part not versed in law. It is therefore advisable, not merely to insert clauses excluding or modifying the ordinary rules of law, which would regulate the contract in the absence of special stipulation, but to supply the partners, as far as possible, with a complete code of regulations expressed, as far as may be, in untechnical language, to which they may refer, as occasion may arise, to determine their rights and duties, to settle their disputes, and generally to ascertain their position, without the necessity of seeking legal assistance, or the intervention of the Court.

Ordinary rules of law prevail where articles are silent.

Articles of partnership are not, however, intended to define exhaustively the mutual rights and obligations of partners. Although the maxim, *expressio unius est exclusio alterius*, applies to such agreements in common with others, yet the partnership contract is regarded as regulated by certain special legal principles, which are of universal application unless expressly excluded or modified. "The transactions of partners with each other cannot be considered merely with reference to the express contract between them. The duties and obligations arising from the relation between the parties are regulated by the express contract between them, so far as the express contract extends and continues in force; but if the express contract, or so much of it as continues in force, does not reach all those duties and obligations, they are implied and enforced by the law; and it is often matter to be collected and inferred from the practice and conduct of the parties, whether they have held themselves or ought or ought not to be held bound by the particular provisions contained in their express agreement. Where it is insisted that the conduct of one partner entitles the other to a disso-

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lution, we must consider, not merely the specific terms of the express contract, but also the duties and obligations which are implied in every partnership contract:" per Lord *Langdale*, M.R., in *Smith* v. *Jeyes*, 4 Beav. at p. 505; see also *Crawshay* v. *Collins*, 15 Ves. 226; *Nelson* v. *Bealby*, 30 Beav. 472; *Browning* v. *Browning*, 31 Beav. 316; *Blisset* v. *Daniel*, 10 Ha. 522.

Principles of construction of partnership articles.

Other principles adopted by the courts in the construction of partnership articles are (i) that articles must be construed with reference to the objects for which the partnership was formed, and so as to advance and not to defeat those objects: see *Chapple* v. *Cadell*, Jac. 537; *Athenæum Life Ass. Co.* v. *Pooley*, 3 De G. & J. 294;—(ii) that no provision in partnership articles shall be so construed as to enable one partner to defraud his co-partners: see *Oldaker* v. *Lavender*, 6 Sim. 239; *Pettyt* v. *Jameson*, 6 Madd. 146;—and (iii), that abuses of express powers shall not be permitted to prejudice the interests of the partnership, or any of its members: *Blisset* v. *Daniel*, 10 Ha. 493; *Wood* v. *Woad*, L. R. 9 Ex. 190. See further Lindley on Partnership, 817 *et seq.*, where these principles are laid down and fully considered.

Variation or waiver of provisions by express agreement, or where stipulations are not acted upon.

Any of the provisions of partnership articles may be waived or varied by the consent of all the partners, evidenced either by express agreement or by conduct. It often happens that some of the stipulations in partnership deeds are not acted upon by the parties. Where this is the case, a court of equity will read the instrument as if those stipulations were expunged; particularly if, by the extension of the business to a species of trading not originally contemplated, they are become inapplicable. Thus, if the deed prescribes a particular mode of taking the accounts at the dissolution, and the partners have entered into a new branch of the trade, in which the accounts could not be so taken without manifest injustice, the Court will direct the accounts to be taken as if there was no such stipulation, and even restrain proceedings at law upon the partnership covenants or bond: *Jackson* v. *Sedgwick*, 1 Swanst. 470; and see *Geddes* v. *Wallace*, 2 Bligh, 295. And

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if the conduct of the parties differs from the articles, even in particulars expressly provided for therein, the Court will infer from the deviation an intention to vary the terms of the written agreement. As, where the parties agree, that no partner shall accept a bill in his own name, without the concurrence of all the others, yet, if they afterwards slide into the habit of permitting one of them to draw or accept bills without the concurrence of the others, the agreement will be considered as varied accordingly: *Const* v. *Harris*, T. & R. 523; see *Coventry* v. *Barclay*, 3 De G. J. & S. 320.

Extension of partnership to business not originally contemplated.

In order to warrant the extension of a partnership to a business or branch of business not originally contemplated by the parties, the *unanimous* consent of all the partners is requisite; for it is competent to any individual member of a firm to insist that the business of the partnership shall be confined to the objects for which it was constituted. And therefore Lord *Eldon* decided, that a joint-stock company formed for the purpose of effecting fire and life insurances could not, without the consent of all the shareholders (of whom the plaintiff was one), be extended to marine insurances; his lordship remarking, that "the Court would restrain particular members from engaging other members in projects in which they have not consented to be engaged, or the engaging in which they have not encouraged, assented to, empowered, or acquiesced in, expressly or tacitly, so as to make it not equitable that they should restrain them:" *Natusch* v. *Irving*, Gow, Part. App. 404.

Recitals.

Recitals are seldom necessary in articles constituting an original partnership. But their insertion is often advisable where a new partnership is to be formed for the purpose of carrying on an existing business, or where a new arrangement is contemplated with regard to the amounts of the interests, or the mutual rights and obligations of the members of an existing firm. In such cases it may often be well to recite any circumstances which tend to explain the nature of and the reasons for the intended change; such as the retirement of a former partner,

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or the introduction of a new partner, and other matters.

Deeds of partnership.

In preparing partnership deeds care should be taken to mark with precision and clearness the nature of the business, and the name or style of the firm; the period at which the partnership is to commence; the length of its duration; the amount and nature of the capital; the proportions in which the parties are to share the profits and losses, and advance the capital: the mode in which the accounts are to be kept, and the business in general carried on; the degree of attention to be paid by the respective partners; the grounds, if any, on which any one or more of the parties shall be empowered to expel or exclude the other or others from the concern; whether, on the decease of either of the partners, his personal representatives are to have the option of succeeding to his share; in what manner, on the dissolution of the partnership by effluxion of time, death, expulsion, or otherwise, the partnership accounts are to be adjusted, and the affairs wound up; and lastly, whether any and what stipulation is to be made for referring disputes to arbitration.

Nature of business, and style of firm.

The nature of the business should be stated, for the purpose of defining the limits beyond which it is not to be extended without the consent of all the partners, and also of defining the authority of the several partners as implied agents of the firm. The name or style of the firm should also be stated. A clause is sometimes inserted providing that no partner shall enter into any engagements on behalf of the firm except in the firm name. Such a provision may be enforced; its intention is that each individual may have the credit which belongs to his name, and not be exposed to consequences which might arise from his name not being used: *Marshall* v. *Coleman*, 2 J. & W. at p. 269. The place where it is intended to carry on the business should also be stated.

As to the commencement of the partnership.

Where no time is mentioned for the commencement of a partnership, it will begin from the date of the articles; and parol evidence cannot be received to show that it was intended to commence at a future

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period; which rule was adhered to, even where the partnership, if immediate, was illegal, the business being that of an attorney, and the partners two persons, one of whom at the time of the execution of the articles had not been admitted: *Williams* v. *Jones*, 5 B. & C. 108. But if articles are not dated, parol evidence is admissible to show at what period the partnership was intended to commence: *Davis* v. *Jones*, 17 C. B. 625. In *Howell* v. *Brodie*, 8 Scott, 372, where it was agreed that the partnership should commence from a future day, upon terms to be embodied in a deed to be executed on such day, and the deed was not executed until after that day, it was held that the authority of each member to bind the firm commenced on the day named, and before the execution of the deed: *Battley* v. *Bailey*, 1 Scott, N. R. 143; see *England* v. *Curling*, 8 Beav. 133.

Duration of partnership.

If no definite term for the continuance of the partnership is specified in the articles, or to be inferred by necessary implication, the partnership will be determinable at will by any partner: see *ante*, p. 287. The partnership will also be liable to be determined by the death or bankruptcy of any partner or, it would seem, by an assignment of his share: see *ante*, p. 284. It is therefore important expressly to define the limit of the duration of the partnership, and also to insert special stipulations to meet the contingency of the premature determination of the partnership. A partnership continued after the expiration of the specified term is, as has been seen, a partnership at will, regulated by the stipulations of the articles so far as applicable: see *ante*, p. 201.

Retirement of partner.

Where a partnership is entered into for a definite term, no partner will be able to retire from the firm before the expiration of the term, unless the articles contain a special provision empowering him to do so. It may therefore often be advisable to insert a clause empowering any partner, or, it may be, one particular partner, to dissolve the partnership, so far as he is concerned, and so to retire from the partnership after a certain time, by giving notice to his co-partners. It will in such a case be necessary in a subsequent part of the articles to make provision for disposing of the

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share of the retiring partner, by giving the continuing partners an option of purchase or otherwise.

Expulsion of partner.

In order to enforce the observance of the provisions regulating the powers and duties of the partners with regard to the conduct of the business, it is often the practice to insert in the articles a clause empowering the firm to expel any partner for misconduct. The events giving rise to this power, and the conditions under which it is to be exercised, should be clearly stated. Where there is a general power to expel for misconduct, express notice of the intention to expel should be given to the offending partner, so as to give him an opportunity of explaining or justifying his conduct: *Blisset* v. *Daniel*, 10 Ha. 493; *Cooper* v. *Wandsworth Board of Works*, 14 C. B., N. S., 180; *Wood* v. *Woad*, L. R. 9 Ex. 190. But where a reasonable opportunity for explanation has been given, of which the offending partner has neglected to take advantage, notice of expulsion is not rendered inoperative by reason of an error in the partnership accounts: *Steuart* v. *Gladstone*, 10 Ch. D. 626. Where a clause specifies certain definite acts as grounds for expulsion, and a partner commits any of such acts, no previous notice of intention to expel is required: *Cooper* v. *Page*, 34 L. T. 90. The Court will set aside a notice of expulsion founded on a mistake as to facts: *Witt* v. *Corcoran*, 21 W. R. 47. All the partners whose concurrence is required by the articles must concur in exercising the power: *Smith* v. *Mules*, 9 Ha. 556. The power is not exercisable where a partnership is continued after the expiration of the term: *Clark* v. *Leach*, 1 De G. J. & S. 409.

Construction of clause for expulsion of insolvent member.

A clause authorizing the expulsion of a member on his becoming insolvent will be construed to mean inability to pay debts, and not the having been adjudicated bankrupt, or compounded with his creditors: *Parker* v. *Gossage*, 2 Cr. M. & R. 617; *Biddlecombe* v. *Bond*, 4 A. & E. 332; see also *Bayly* v. *Schofield*, 1 M. & S. 338.

Position of expulsion clause.

The expulsion clause, if general, may be inserted in this place, or immediately after the clauses relating to the conduct of the business and taking the ac-

counts; if, however, the power of expulsion is to relate only to the breach of certain particular stipulations, it seems the more convenient course to group the clauses containing such stipulations together, and to insert the expulsion clause immediately after the last of such clauses. Of Articles of Partnership.

The articles ought clearly to specify the nature, amount, and value of the capital intended to be employed in the business, and the proportions in which the several partners are to contribute the capital and share in the profits. Clauses as to capital.

Where an agreement, constituting a partnership, is silent as to the relative shares of the respective parties, the rule is to consider them as entitled to the profits equally: see *Peacock* v. *Peacock*, 2 Camp. 45; 16 Ves. 56; *Farrar* v. *Beswick*, 1 M. & Rob. 527. As to the rights of the representatives of a deceased partner where the business has been carried on after his death, see *Yates* v. *Finn*, 13 Ch. D. 839. It is important to distinguish the capital of a partnership from its property or assets. The capital is a sum of money or other property of a definite amount or value originally fixed by agreement of the partners and contributed by them for the purpose of the business. The capital cannot be increased or diminished except with the consent of all the partners; and if the capital originally contributed is exhausted, and any of the partners refuse to contribute more money, the partnership will be dissolved: *Jennings* v. *Baddeley*, 3 K. & J. 78. The property or assets of a firm is, on the contrary, subject to constant fluctuation, according as the business is profitable or otherwise, inasmuch as it includes everything of money value possessed by the firm for the time being: see *Dinham* v. *Bradford*, L. R. 5 Ch. 519; *Robinson* v. *Ashton*, L. R. 20 Eq. 25.

It will be generally found convenient that the capital should be stated as so much money. If any partner is to contribute land or goods, the value of such property should be ascertained, and the contribution should be expressed in money value accordingly: see Lindley on Partnership, 834. Where the property includes land, it will be well to declare Capital should be money.

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that it shall form part of the partnership property, and that as between the real and personal representatives of a deceased partner, it shall be deemed personal estate, and devolve accordingly.

Apprenticeship fees, &c.

It is usual to provide that apprenticeship fees and other occasional payments shall be deemed profits, and not capital, and be distributed accordingly.

Appointments, trade secrets, goodwill, &c.

If the property of the firm is to comprise the emoluments of any official appointment, special clauses should be introduced with regard to the manner in which they are to be held or realised for the benefit of the firm, or, if such is the intention, providing that such emoluments shall be enjoyed solely by the partner holding the appointment: see *Collins* v. *Jackson*, 31 Beav. 645; *Alston* v. *Sims*, 1 Jur., N. S. 24. It will also be necessary to insert provisions (which are usually inserted in a subsequent part of the articles) specifying the rights of the partners with regard to such offices on dissolution of the partnership: see *Smith* v. *Mules*, 9 Ha. 556; *Ambler* v. *Bolton*, L. R. 14 Eq. 427. Similar provisions will also often be necessary with regard to the right to work and use patents, trade secrets, and trade-marks, and the benefit of the goodwill of the business, as to which, see *post*, p. 313.

Interest on capital and advances.

Articles of partnership often contain special stipulations as to allowance of interest on the capital or advances from time to time contributed or made by the partners. Such interest should be made payable before any division of profits, and the interest on advances should take precedence over interest on money contributed as capital. Where, however, the capital is contributed by the partners in equal shares, it will generally be intended that they should also take an equal share of the profits, and, if so, it will not be necessary to insert any provision as to allowing interest on capital. It may, however, be advisable that the articles should clearly indicate whether profits ascertained but left in the concern are to be considered as additions to capital, and bear interest accordingly; as otherwise, each partner may draw out his share in the profits so left at any time he pleases, but he will not be

entitled to interest upon them: see *Dinham* v. *Bradford*, L. R. 5 Ch. 519.

Outgoings.

Here should follow a provision for the payment of the ordinary outgoings of the business, *e. g.* rent, taxes, rates, repairs, salaries and wages of clerks and servants, expenses of and incident to management, allowances for treating customers, &c.: see *Ex parte Sedgwick*, 2 Jur., N. S. 949; *Ex parte Chippendale*, 4 De G., M. & G. 19; *Burden* v. *Burden*, 1 Ves. & B. 172; *Thornton* v. *Procter*, 1 Anstr. 94; *East India Co.* v. *Blake*, Finch, 117; *Stocken* v. *Dawson*, 6 Beav. 375; *Stainton* v. *Carron Co.*, 24 Beav. 356. In connection with such stipulations a provision may be inserted empowering each partner to draw out quarterly, or at other regular periods, a fixed sum for his personal expenditure, any excess of the sum so drawn out over the share of any partner in the net profits of the business for the current year to be refunded.

Conduct of business, and powers of partners.

Next will follow clauses with regard to the conduct of the business and the powers of the partners. It is well to state who are to be the bankers of the firm, and by whom and in whose name cheques are to be drawn.

General clauses.

Articles of partnership usually contain general clauses whereby the partners agree to be true and faithful in their mutual dealings, to attend diligently to the business, not to engage in other business, to give full information to each other concerning the business, not to do anything whereby the property of the firm may be taken in execution, and to pay their private debts. Such clauses may be of use to remind the partners of their mutual obligations, but they may be omitted, if desired, as these obligations are implied by law as essential to the partnership relation. If, however, some of the partners are intended to give no attention, or only a limited amount of attention and time to the business, or to give attention only to a particular branch of the business, a special stipulation to this effect should be inserted, as also, if necessary, a stipulation for payment of a salary or remuneration to any of the partners for his service in managing the business, or

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for expenditure of extra time and labour in connection therewith. It is also usual to insert clauses prohibiting any partner from pledging the credit of the firm, releasing or compounding firm debts, assigning his share, becoming surety, drawing, accepting or indorsing bills except in the ordinary course of business, &c., without the consent of his co-partners; and providing that any partner acting in violation of such prohibitions shall, as between the partners themselves, bear all liabilities resulting from his action, and shall indemnify his co-partners therefrom.

Engaging servants, &c.

It may be advisable to provide expressly as to who is to engage and dismiss clerks and servants, and as to other details of management.

Power for majority to decide disputes.

If the number of partners exceed two, it will generally be well to insert a clause empowering the majority to decide any question relating to the business of the firm, and providing that such decision shall be binding on all the partners.

Accounts.

The articles should contain clauses providing that proper books of account shall be kept at the place of business of the firm, and be open to the inspection of the partners; the removal or detention of the books contrary to the articles will be restrained by the Court: *Taylor* v. *Davis*, 3 Beav. 388, n.; *Greatrex* v. *Greatrex*, 1 De G. & S. 692. The taking of an annual general account should also be provided for, showing the assets and liabilities of the partnership, and what is due to or from each partner by or to the firm, so as to enable each partner to know the position in which the firm stands with regard to its customers, and also the position in which the several partners stand to the firm. It should also be provided that the accounts thus taken shall be signed by the partners, and when so signed shall be binding and conclusive on all the partners unless any manifest error shall be found therein within a specified time. Such clauses, however stringently drawn, will only apply to *bonâ fide* errors, and will not prevent a partner from reopening the accounts, where there has been fraudulent misrepresentation or concealment: *Oldaker* v. *Lavender*, 6 Sim. 239; *Blisset* v. *Daniel*, 10 Ha. 493.

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As a general rule the Court will not reopen settled accounts, except where a fiducial relation exists between the parties: *Lawless* v. *Mansfield*, 1 Dr. & W. 557 (*a*); or where there has been misrepresentation or fraud: *Oldaker* v. *Lavender*, 6 Sim. 239; *Blisset* v. *Daniel*, 10 Ha. 293. So the Court will not reopen a settled account, merely because the partners thought a bad debt was a good one: *Laing* v. *Campbell*, 36 Beav. 3. Where an error of a single item is proved in a long settled account, this entitles a partner to surcharge and falsify, but not to reopen the whole account: *Gething* v. *Keighley*, 9 Ch. D. 547. Where neither the alleged errors in the account nor the alleged fraudulent concealment were clearly proved, the Court refused to reopen a settled account after a long period of time had elapsed since the settlement: *Cuthbert* v. *Edinborough*, 21 W. R. 98.

Where an account and valuation had been duly and properly taken pursuant to the articles, and a deceased partner had retained the rest book in his possession for two months without signing it as required by the articles, it was held that he must be taken to have acquiesced in the account and valuation, and that the absence of his signature was immaterial: *Coventry* v. *Barclay*, 3 De G., J. & S. 320; see also *Ex parte Barber*, L. R. 5 Ch. 687.

Arrangements usually consequent on dissolution.

On the dissolution of a partnership, there are two ordinary modes of winding up the affairs of the concern: one is by a general conversion of the partnership assets, and dividing the produce, after providing for debts, among the partners in proportion to their respective interests; the other is, for one partner to purchase the share of the other, usually at a valuation. The former is the mode in which the property is dealt with by the Court in the absence of express stipulation, and indeed in

(*a*) The case of *Lawless* v. *Mansfield* was not that of a partnership, but reference may be usefully made thereto for information as to the principles guiding the Court as to the re-opening of settled accounts, which question is fully and elaborately considered in the judgment.

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every case is necessarily the rule where there is no positive agreement; without which, of course, neither partner can claim to take the share of the other at a valuation, their rights being equal: *Featherstonhaugh* v. *Fenwick*, 17 Ves. 298. And if it is provided generally, that the debts shall be paid and the stock and effects divided, a trust for sale and conversion will be considered as implied, being necessary in order to raise a fund for paying the debts, as well as more beneficial and convenient in regard to the parties themselves, than a division of the articles in specie: *Rigden* v. *Pierce*, 6 Madd. 353; *Cook* v. *Collingridge*, Jac. 607.

Provision for purchase of partner's share on bankruptcy, void, *semble*.

The latter mode of arrangement is generally stipulated for in articles in the event of the dissolution of the partnership by the death, expulsion, or voluntary retirement of either of the partners, especially where the property consists of an interest in land, stock, or machinery, which is essential to the carrying on of the trade. The same arrangement is sometimes extended to bankruptcy; but there is strong reason to contend that the provision in such case is void, as contravening the policy of the bankrupt laws, being an attempt to dispose of the bankrupt's property in an event in which those laws have taken the power of disposition from him: see *Wilson* v. *Greenwood*, 1 Swanst. 481; *Whitmore* v. *Mason*, 2 J. & H. 204.

Mode of securing a deceased or retiring partner's share.

Where a deceased or retiring partner's share is to be purchased at a valuation, the purchase-money will generally be secured by the bond or covenant of the continuing partner or partners, either with or without a surety, and is commonly payable by instalments; or otherwise it may be secured by a charge upon the share itself. The approval of the person offered as surety is often a source of dispute; and therefore the nomination, in case the parties cannot agree, should be left to some third person. Any attempt to secure the purchase-money on the share itself is generally inefficacious in the event in which the security is most wanted, namely, that of the purchasing partners becoming bankrupt, because the possession being delivered to him, the share, so

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far as it consists of "goods," is considered as in his "order and disposition," and within the intent of the well-known statutory provision, which vests such property in his trustee in bankruptcy (see *ante*, Vol. III., p. 770 *et seq.*), and so far as the share consists of book debts and other assets not being "goods," the security will also be inoperative against the bankruptcy trustee by reason of its having been converted into the joint estate of the new firm composed of the purchasing partners: see *ante*, p. 274.

Valuation of shares of partners.

Where partners stipulate to settle accounts periodically, and the share of a deceased partner in the stock and profits is to be regulated by the last account preceding his decease, but the accounts are not taken at the prescribed periods, so that, at the decease of the partner, there is, in fact, no account by which, according to the literal construction of the articles, the share can be ascertained, equity will consider that as done which was agreed to have been done, and will accordingly hold the deceased partner to be entitled to the same share as would have belonged to him if the accounts had been adjusted at the proper time, but computed from the last *actual* settlement. Thus, in *Pettyt* v. *Jameson*, 6 Madd. 146, the articles provided that the accounts should be settled upon every 25th of March; and that, if either of the partners should die during the partnership term, his interest should be regulated by the last yearly settlement, and that he should have no concern with profit or loss from that time; but his executors should, from that time, receive interest at £5 per cent. on the sum due to him at the last yearly settlement. The plaintiff's testator died on the 13th February, 1813. For several years before the testator's death the partners had not settled their accounts on the 25th of March, but the settlements were made at irregular and more distant intervals. The last settlement was on the 5th November, 1811. The defendant had begun to take steps for a further settlement in October, 1812, but the testator then refused to come to a settlement. The plaintiff claimed a share in the profits up to his death, there having been no annual settlement

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according to the articles. The defendant insisted that the account of profits was to cease with the last actual settlement in November, 1811. The Vice-Chancellor observed, that the articles had two plain intentions; that there should be an annual settlement, and that the estate of a deceased partner should receive no profits for the fraction of the year since the last annual settlement. That the settlement of the 5th November, 1811, was to be considered as a settlement substituted by the agreement of the parties in the place of the settlement stipulated for in the articles; that if the testator had died on the 1st October, 1812, it could not have been contended that his estate was to take profits subsequently to the 5th November, 1811, being the last settlement within a year of the death; and if this were to be treated in that case as a settlement within the spirit of the articles *against* the testator's estate, it must be equally considered as a settlement *for* the testator's estate, that is, as a settlement of the 5th November, 1811, which bound each party to come to the next annual settlement on the 5th November, 1812; that the Court must act upon that which ought to have been done as if it had been done, and must declare the testator's estate entitled to a share in the profits up to the 5th November, 1812, being the day which ought to have been the last annual settlement before the testator's death.

In this case it will be perceived the Court did not wholly disregard the clause in question, because it had not been literally adhered to, but acted upon the principle of that provision so far as the conduct of the parties admitted of its application. See also *Simmons* v. *Leonard*, 3 Ha. 581; *Coventry* v. *Barclay*, 3 De G., J. & S. 320: see also *Vyse* v. *Foster*, L. R., 7 H. L. 318.

Clauses for transmitting shares to widows, &c.

Sometimes partnerships are formed for a period greatly exceeding the probable duration of the lives of any of the parties, the partnership deed containing provisions for transmitting their shares to their respective widows or children at their decease.

A clause of this nature occurred in the case of *Balmain* v. *Shore*, 9 Ves. 500, where A., B., and

C., entered into partnership as potters for ninety-nine years; and it was covenanted that, in case of the decease of any of the parties, his share should belong to his widow for life, and after her death be divided among his children, if any; and in default of children, that the share should go to the widow's executors, administrators, or assigns; it was held that the children of a deceased partner did not take any vested interest in his share of the partnership assets during the life of his widow. Of Articles of Partnership.

Where a partnership agreement contained a provision that on the death of a partner his widow might, if she should think fit, continue to carry on the business with the surviving partner, and should be entitled to the share of the deceased partner. The partner died, having otherwise disposed of his share in the partnership by his will: it was held, that the provision in the articles took the testator's share in the business out of the provisions of the will, and that the widow became, under the articles, entitled to such share: *Page* v. *Cox*, 10 Ha. 163.

It is obvious, that where the business is to be carried on by surviving partners for the benefit of the family or representatives of a deceased partner, it should be stated what degree of interference and control is to be exercised by the latter, and whether any allowance is to be made to the acting partners for their trouble in managing the concern. In the absence of agreement, they can claim no such allowance: *Burden* v. *Burden*, 1 Ves. & B. 172; *Stocken* v. *Dawson*, 6 Beav. 371; though the rule is otherwise where a partner carries on the trade after dissolution of the firm, for the joint benefit, without any obligation so to do under the partnership deed: *Featherstonhaugh* v. *Turner*, 25 Beav. 382; *Mellersh* v. *Keen*, 27 Beav. 242; *Brown* v. *De Tastet*, Jac. 284; *Crawshay* v. *Collins*, 2 Russ. 347.

Questions have not unfrequently arisen where a deceased partner has, by his will, bequeathed his share in the business to trustees by way of settlement, as to the rights of the tenant for life and remaindermen respectively. The general rule is, that the net profits of any one year, or other period Settlement of shares.

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specified in the articles for the taking of general accounts, are to be treated strictly as profits, and that the tenant for life will be entitled to receive them in full, notwithstanding any deficiency in a previous year; and the trustees are not entitled to retain out of such profits a sum or account of capital equal to the amount written off in the previous year: *Gow* v. *Forster*, 26 Ch. D. 672. But if the articles provide that any proportion of the profits is to be treated as capital, the tenant for life is bound by such arrangement: *Straker* v. *Wilson*, L. R. 6 Ch. 503; *Browne* v. *Collins*, L. R., 12 Eq. 586.

Clauses admitting the representatives of a deceased partner not generally compulsory.

Clauses providing for the admission into the firm of a deceased partner's representatives will, in general, be construed as giving to them an option to become partners, and not as constituting them partners absolutely; for, to produce the latter effect (assuming that such effect *can* be produced), the intention should be unequivocally expressed. Thus, where in a deed of partnership, the term of which was to be nineteen years, it was provided, that, if either of the partners should die during the term, "the widow or other legal personal representative of the partner so dying should be let into the said partnership concern, and be and become a partner therein, in the same manner, and upon the same stipulations," &c., "as the partner so dying stood at the time of his decease;" but so that any future husband of any such widow should not interfere in the management of the concern; it was contended that this clause, though giving an option to the widow, was absolute, if she declined, as to the personal representatives. *Alexander*, C.B., however, was of opinion that it was a covenant only to permit them to become partners, if they thought proper, and that they were entitled to a reasonable time for declaring their election after the testator's decease; for which purpose an opportunity should be given them of inspecting the partnership accounts: *Pigott* v. *Bayley*, 1 M'Clel. & Y. 569. If the representatives are to be admitted on certain terms, and they do not comply with such terms, they never become partners, and the dissolution

takes place absolutely from the death of the deceased partner: *Kershaw* v. *Matthews*, 2 Russ. 62: see *Downs* v. *Collins*, 6 Ha. 418; *Madgwick* v. *Wimble*, 6 Beav. 495; *Holland* v. *King*, 6 C. B. 727; *Brooke* v. *Garrod*, 2 De G. & J. 62. As to the rights and liabilities of representatives of a deceased partner employing his capital in carrying on the business jointly with the surviving partners, see *Willetts* v. *Blandford*, 6 Jur. 274; *S. C.*, 1 Ha. 270; *Wedderburn* v. *Wedderburn*, 4 My. & C. 41; *Vyse* v. *Foster*, L. R., 7 H. L. 318: and see Lindley on Partnership, 976 *et seq.* Of Articles of Partnership.

A power to appoint a successor by will has been held to amount to an absolute power of disposition, and to be executed by a general bequest: *Ponton* v. *Dunn*, 1 Russ. & M. 402.

Sometimes articles provide that on the decease of a partner, the surviving partner shall pay to the widow an annuity out of the net profits, or a share of such profits, until the expiration of the partnership term. It has been seen (*ante*, p. 197), that the mere receipt of a share of profits, or of an annuity out of and varying with the profits will not render the recipient liable as a partner. The widow may enforce payment of the annuity or share in the profits pursuant to the articles: *Ex parte Harper*, 1 De G. & J. 180; and such an annuity is impressed with a trust, and is payable to the widow free from the claims of her husband's separate creditors: *Murray* v. *Flavell*, 25 Ch. D. 89. Annuities to widows.

Upon a dissolution a difficulty sometimes arises with respect to what is called the goodwill of the business. It is rather difficult to give any exact and complete definition of the term "goodwill;" Lord *Eldon*, in *Crutwell* v. *Lye*, 17 Ves. at p. 346, defines goodwill as "the probability that the old customers will resort to the old place;" and *Brett*, L.J., in *Leggott* v. *Barrett*, 15 Ch. D. 306, said that "the customers are really the persons who form the goodwill;" but it is submitted that these dicta give a somewhat narrower view of the term than is usually accepted. Lord Justice *Lindley* defines the term as "the benefit arising from connection and reputation" Goodwill.

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(see Lindley on Partnership, p. 859), and it is generally understood to mean the reputation attaching to a business amongst the actual customers of the firm, and also the general public as potential customers, and more or less associated with the name under which, and the place where the business was carried on.

Upon the sale of a business as a going concern, its value is in many cases largely affected by such reputation; so, in the absence of special stipulation, the goodwill is treated as part of the assets of the firm: *Hall* v. *Burrows*, 4 De G., J. & S. 150; *Smith* v. *Everett*, 27 Beav. 446.

The goodwill of a business varies in its character according to the nature of the business itself. In some cases its value will in great measure depend on the locality or even the particular premises where the business is carried on; in other cases these considerations will have little or no effect on its value. It is also obvious that the goodwill of a business on its first commencement will be of little or no value, but it may with the development of the business become a material part of the property of the firm.

Rights of partners to goodwill where the articles are silent on the point.

Questions have not unfrequently arisen on the dissolution of partnerships, where the articles did not contain any express provisions with regard to goodwill, as to what was to be done with the goodwill, and as to the respective rights of parties in relation thereto. These questions have given rise to much conflict of judicial decision.

In the absence of any clause in the articles providing for the purchase at a valuation of the share of a retiring partner by the continuing partners, a sale of the partnership assets may be insisted on by either of the partners, and such assets will include the goodwill: *Bradbury* v. *Dickens*, 27 Beav. 177. And the same rule would seem to apply so as to entitle the representatives of a deceased partner to insist on a sale of the goodwill: see *Wedderburn* v. *Wedderburn*, 22 Beav. 104; *Smith* v. *Everett*, 27 Beav. 446. But the goodwill in such cases often proves to be almost valueless, as the continuing

or surviving partner is not under any obligation to retire from business: *Farr* v. *Pearce*, 3 Madd. 74; *Davies* v. *Hodgson*, 25 Beav. 177; and it is not quite clear that a surviving partner, notwithstanding a sale of the goodwill of the business, may not continue to carry on a similar business in the firm's name, even though such name included that of the deceased partner: *Webster* v. *Webster*, 3 Swanst. 490; *Banks* v. *Gibson*, 34 Beav. 566; but see *contra*, *Churton* v. *Douglas*, Johns. 174; and it has been held that the name of a retiring partner who has sold his share, may not be so used even where the continuing partner has purchased the share: *Scott* v. *Rowland*, 20 W. R. 508; see also *Routh* v. *Webster*, 10 Beav. 561; *Bullock* v. *Chapman*, 2 De G. & S. 211; *Troughton* v. *Hunter*, 18 Beav. 470; but see *Levy* v. *Walker*, 10 Ch. D. 436, where *James*, L.J., expressed his opinion that the assignment of the goodwill of a business carries with it the exclusive right to the use of the firm name; but it was not necessary to decide this point.

Where there is a clause in the articles providing for the valuation of the shares in the partnership property on a dissolution, but no express provision is made as to the goodwill, questions of much doubt and difficulty may arise as to whether the goodwill is to be included in the valuation.

What expressions will include goodwill.

In construing articles of partnership, "goodwill" has been held to be included in the expression "effects and things": *Barrow* v. *Barrow*, 29 L. T. 431; and "property and effects": *Reynolds* v. *Bullock*, 47 L. T. Ch. 773; and where there was a provision for the valuation of shares on dissolution, the expression "partnership stock" in the clause was held to entitle the executor of a deceased partner to have the goodwill valued: *Hall* v. *Barrows*, 4 De G., J. & S. 150; but in *Hall* v. *Hall*, 20 Beav. 139, and *Kennedy* v. *Lee*, 3 Mer. 452, the expression "property and effects" was held not to include "goodwill." So also the expression "partnership premises," in *Burfield* v. *Rouch*, 31 Beav. 241; and where the articles provided that upon the retirement of a partner his share should be valued upon

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the basis of an annual account of the stocks, &c., "and other the estate and effects" of the partnership, it was held by the Court of Appeal (reversing the decision of *Fry*, J.) that the goodwill was not intended to be included in the account: *Steuart* v. *Gladstone*, 10 Ch. D. 626.

Articles should contain express provisions as to goodwill.

Enough has been said to show that the question of the disposal of the goodwill of a business on dissolution should be expressly provided for, and the word "goodwill" should be used in the clause containing such provision; where any question is likely to arise as to goodwill, it should not be left for the Court to construe vague expressions, but the mode in which it is proposed to deal with the goodwill on a dissolution, and the basis of the valuation should be clearly specified: see *Reynolds* v. *Bullock*, 47 L. J. Ch. 773.

In connection with the goodwill clause, any special stipulation may be introduced defining the rights of parties on a dissolution with regard to official appointments, use of trade-secrets or trade-marks, and other similar matters.

Restrictions on carrying on business in competition with firm.

The sale of the goodwill of a business does not of itself imply a covenant on the part of the vendor not to carry on a similar trade in the neighbourhood: *Shackle* v. *Baker*, 14 Ves. 468; *Crutwell* v. *Lye*, 17 Ves. 335. In *Labouchere* v. *Dawson*, L. R., 13 Eq. 322, it was held by *Romilly*, M.R., that the vendor might be restrained from soliciting the customers of the old firm; and this restraint was extended to all dealings with old customers by *Jessel*, M.R., in *Ginesi* v. *Cooper*, 14 Ch. D. 599. But this extension was disapproved of by the Court of Appeal in *Leggott* v. *Barrett*, 15 Ch. D. 306. The rule laid down in *Labouchere* v. *Dawson* does not apply to compulsory alienation of a partner's share on bankruptcy: *Walker* v. *Mottram*, 19 Ch. D. 355; nor to the case of the expulsion of a partner: *Dawson* v. *Beeson*, 22 Ch. D. 505; and in the recent case of *Pearson* v. *Pearson*, 27 Ch. D. 145, the doctrine was altogether disapproved of by *Baggallay*, L.J. and *Cotton*, L.J. (*diss. Lindley*, L.J.), but the decision turned upon the construction of the particular terms

of the agreement. Having regard to this remarkable conflict of judicial opinion, it will be well, where it is intended that a retiring partner should not compete with the firm, to restrain him from doing so by an express stipulation to that effect. It is not unusual to provide that the retiring partner shall enter into a bond to secure his observance of the stipulation. As to the legality of such bonds, see *ante*, tit. BONDS, Vol. II., p. 328 *et seq.*

Arbitration clause.

A stipulation, that disputes arising between the partners shall be referred to arbitrators, to be named by the respective partners, is almost invariably inserted in articles of partnership. The subject of references to arbitration generally has been already discussed at considerable length (*ante*, tit. ARBITRATION, Vol. II., p. 94 *et seq.*); but some points with regard to the effect of arbitration clauses in partnership articles will be here noticed.

It is clear, that the specific performance of such clauses cannot be enforced in equity: *Agar* v. *Macklow*, 2 S. & St. 418; *Street* v. *Rigby*, 6 Ves. 818. Nor can more than nominal damages for a breach thereof be recovered, for the jury have no means of ascertaining the amount of damage; but an action will lie for breach of an agreement to refer: *Livingston* v. *Ralli*, 5 E. & B. 132; see *Tattersall* v. *Groote*, 2 B. & P. 131. Nor (independently of statutory enactment) can it be pleaded in bar to an action, whether the clause be general, or expressly applied to the particular question in dispute: *Cooke* v. *Cooke*, L. R., 4 Eq. 77; *Edwards* v. *Aberayron Soc.*, 1 Q. B. D. 563; *Dawson* v. *Fitzgerald*, 1 Ex. D. 257. But by the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), sect. 11, if an action is commenced by one party contrary to an agreement to refer disputes to arbitration, the Court or a judge may, on the application of the defendant or defendants, stay proceedings in the action: see the section set out in full and considered, *ante*, Vol. II., p. 99 *et seq.* The power to stay proceedings is discretionary, and the Court has refused to interfere, where fraud was alleged: *Wallis* v. *Hirsch*, 1 C. B., N. S. 316; and where it

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appeared that the object of the application was merely to cause delay or obstruct the action: *Lucy* v. *Pearson*, 1 C. B., N. S. 639; *Corcoran* v. *Witt*, L. R., 8 Ch. 476 n.; and where a party had become bankrupt: *Pennell* v. *Walker*, 18 C. B. 651. But generally where there is a *bonâ fide* dispute capable of being referred to arbitration pursuant to an agreement to refer, the Court will stay proceedings in any action brought contrary to the agreement, and so indirectly enforce its observance: *Plews* v. *Baker*, L. R., 16 Eq. 364. If parties choose to determine for themselves that they will have a forum of their own selection, instead of resorting to the ordinary courts, a *primâ facie* duty is cast upon the Courts to act upon such arrangement: per Lord *Selborne*, in *Willesford* v. *Watson*, L. R., 8 Ch. 473; see also *Law* v. *Garrett*, 8 Ch. D. 26. See further, as to the circumstances under which the Court will stay proceedings: *Wickham* v. *Harding*, 28 L. J., Ex. 215; *Seligmann* v. *Le Boutillier*, L. R., 1 C. P. 681. The Court will, in a proper case, stay proceedings even after the expiration of the partnership term: *Gillett* v. *Thornton*, L. R., 19 Eq. 599. Where partnership articles provided for reference to arbitration of disputes within a specified time, and a partner required a reference as to the last dispute which had arisen (the others being out of time), it was held that the Court might take upon itself the decision of all disputes: *Young* v. *Buckett*, 46 L. T. 266; *S. C.*, 30 W. R. 511. And where complications have arisen, rendering the conduct of a reference difficult, the Court will substitute itself for arbitrators, and, if necessary, order the value of a share to be ascertained: *Dinham* v. *Bradford*, L. R., 5 Ch. 519.

Powers of arbitrators.

It is for the arbitrators, not the Court, to construe the partnership articles: *Cope* v. *Cope*, 52 L. T. 607; *S. C.*, W. N. 1885, p. 110. Under a general submission, the arbitrators have power to dissolve the partnership: *Green* v. *Waring*, 1 W. Bl. 475; but they are not bound to do so, though expressly appointed to determine a dissolution, &c., as well as other matters in difference: *Simmonds* v. *Swaine*, 1 Taunt. 548. In awarding a dissolution,

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the arbitrators have, under a general submission, a wide discretion as to settling the terms on which the partnership is to be dissolved. So they may direct that one partner shall have power to sue in the name of the other, or others, and either upon the terms of the latter being indemnified, or not: *Burton* v. *Wigley*, 1 Bing. N. C. 665; and they may impose restrictions on individual partners as to carrying on the business within specified limits: *Morley* v. *Newman*, 5 D. & R. 317; or may direct the execution of mutual releases between the partners: *Lingood* v. *Eade*, 2 Atk. 505. But an arbitrator cannot, without a special power in the arbitration clause, appoint a receiver: *Re Mackay*, 2 A. & E. 356; nor that some of the partners should pay to the arbitrator himself a sum of money to be applied in payment of certain specified debts: Id.; nor to direct the return in part of a premium paid for admission to the partnership: *Tattersall* v. *Groote*, 2 B. & P. 131. If it is desired to limit or extend the arbitrator's powers, special provision to that effect should be made in the arbitration clause. For all ordinary purposes, the usual clause will be found sufficient, providing that the arbitration shall be conducted according to the provisions of the Common Law Procedure Act, 1854.

Stamps on partnership articles.

Stamps.]—The Stamp Act, 1870 (33 & 34 Vict. c. 97), does not impose any special duty on partnership articles, which, therefore, must bear a stamp of 10*s.*, or of 6*d.*, according as the articles are, or are not under seal.

Assignment by outgoing partner.

An assignment by a partner, on dissolution of the partnership, of all his interest in the stock in trade and other assets, in consideration of money, is chargeable with *ad valorem* stamp duty, as a sale: *Christie* v. *Commissioners of Inland Revenue*, L. R., 2 Ex. 46; *Phillips* v. *the same*, Id. 399; see *Potter* v. *the same*, 10 Exch. 147. These cases overrule *Belcher* v. *Sykes*, 6 B. & C. 234. But if a retiring partner, or the representative of a deceased partner, merely takes his money pursuant to the articles, and gives a receipt acknowledging that he has no further

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claim on the firm, it would seem that this would be regarded as merely a special mode of dividing the assets, and not chargeable : see Lindley on Partnership, p. 866 ; and see *Steer* v. *Crowley*, 14 C. B., N. S. 337.

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Points to be considered.

The application of the law of partnership to companies is a subject of so extensive and complicated a character that its complete exposition is beyond the scope and limits of the present work. It is proposed to introduce here some remarks, which it is hoped may be sufficient for ordinary purposes relating to conveyancing, on the following points with regard to the law of companies :—(1) Wherein a company differs from a partnership ; (2) The preliminary steps usual for the formation of a joint stock company ; (3) The memorandum of association ; (4) The articles of association ; and (5) The reconstruction and amalgamation of companies. For fuller and more detailed information with regard to companies, reference must be made to the well-known text books on the subject (*b*).

Difference between partnerships, corporations, and companies.

(1.) *The Difference between a Partnership and a Company.*]—A partnership, as has been seen, is not recognized as such by English law apart from the individual members composing the firm (see *ante*, p. 220), and the rights and liabilities of the firm are the rights and liabilities of the individual members, and enforceable by and against them individually. A corporation, on the contrary, is in law an aggre-

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(*b*) For such information reference may be made particularly to Lord Justice *Lindley's* "Treatise on the Law of Partnership and Companies," Mr. *Buckley's* "Treatise on the Law and Practice under the Companies Acts," and to Mr. *F. B. Palmer's* "Company Precedents," and Mr. *Chadwyck Healey's* "Company Law and Practice." These works, as well as others, have been consulted by the present editor, and he takes this opportunity of acknowledging the assistance he has obtained from them in preparing the following remarks, and the Precedents and notes relating to Companies.

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gate person with an independent legal existence, and with rights and obligations which are distinct from those of its individual members, and such rights and obligations are enforceable by or against the corporation itself, but not by or against its members personally. A corporation in the strict sense of the term can, in this country, be formed only by Royal Charter, or by Act of Parliament.

Unincorporated company.

The question wherein a company differs from a partnership on the one hand, and a corporation proper on the other, depends on whether the company is, or is not, incorporated. At common law, there is no limit to the number of persons who may associate themselves in partnership; and subject to the statutory enactments from time to time in force, regulating the number of such persons, it would seem to be the better opinion (though the tendency of decisions formerly was otherwise) that there is nothing illegal in any number of persons associating themselves together for the purpose of carrying on a trade or business under a common name, dividing their capital into transferable shares, and entrusting the management of the business to a board or council of directors selected by themselves, with power to make rules binding upon the members of the association. Such unincorporated companies, however, differ little from ordinary partnerships. The company itself has no recognized legal existence, and the rights and liabilities of the members are generally speaking (*c*) the same as those of ordinary partners, except so far as such rights and liabilities are, as between the members themselves, qualified by the instrument of association. The practical inconvenience of this mode of association is so great that unincorporated companies of the nature of large partnerships with transferable shares, are not of frequent occurrence in England, and their constitution and legal incidents need not be here further discussed. Forms of articles of association or partnership of such companies will be found

(*c*) Cost-book mining companies are to some extent excepted from this general rule: see *post*, p. 323.

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in the following Precedents: see *post*, pp. 448, 456.

Limitation of number of members of unincorporated companies.

By the Companies Act, 1862, sect. 4 (set out *ante*, p. 196), the number of persons who may associate themselves in an ordinary partnership, or an unincorporated company, is limited to ten, where the business is banking, and to twenty where it is any other business, having for its object the acquisition of gain. And by sect. 6 of the same Act, any seven or more persons associated for any lawful purpose may, by complying with the requirements of the Act, form an incorporated company with or without limited liability: see *post*, p. 332.

Exceptions to the rule.

All such associations whose members exceed the number of ten or of twenty, as the case may be, must be registered under the Act, otherwise they have no legal existence (*Re Padstow Association*, 20 Ch. D. 137; and see *ante*, p. 196), unless they fall within the exceptions enumerated in that section. These exceptions are (1) companies formed in pursuance of some other Act of Parliament, (2) or of letters patent, (3) or engaged in working mines within and subject to the jurisdiction of the Stannaries.

Companies formed by Act of Parliament.

Under the first class of exceptions would be included unincorporated companies having power to sue and be sued by a public officer by virtue of a special Act, or in the case of banking companies by virtue of the general Act, 7 Geo. 4, c. 46. No company, however, can now be formed under this Act (see 7 & 8 Vict. c. 113, s. 1), although companies so formed still exist. Since the Judicature Act this power would seem not to be required.

This class would also include companies incorporated under a special Act embodying the Companies Clauses Consolidation Acts. Such companies are formed for the purpose of obtaining larger powers than the general Acts bestow, such as the compulsory purchase of lands, and consist of railway, gas, water, and other like companies.

Companies formed by

Under the second class would be included unincorporated companies, to which certain privileges

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Letters Patent or Royal Charter.

have been granted under the Letters Patent Act, 7 Will. 4 and 1 Vict. c. 73, and companies incorporated by Royal Charter, and fulfilling the legal notion of a corporation proper. But Charters are now seldom granted, and the Letters Patent Act has in practice been superseded by the Companies Acts.

Cost-book mining companies.

With regard to the third class of exceptions it should be observed, that it is not any mining adventure to which it applies, but only to such as are within the jurisdiction of the Stannaries. It is only to the western counties of England that this jurisdiction extends, where from early times a system of mining was carried on upon what is called the "cost-book" principle.

It has been seen that mines, like any other undertaking, may be worked by persons in partnership, to whom the ordinary law of partnership applies. But, as a consequence of following certain local customs, the constitution of a mining company on the cost-book principle differs in many respects from an ordinary trading or mining partnership.

Such companies consist of a large number of persons, who enter into an agreement to carry on the work and share the profits of the adventure in certain definite proportions. The management is placed in the hands of an agent called the "purser," who keeps a book called the "cost-book," in which are entered the agreement of the parties, names of the shareholders, receipts and expenditure of the mine, accounts of their respective interests and liabilities with regard to the mine, transfers of shares, and minutes of proceedings.

The main distinctions established by recognized local custom between cost-book mining companies and ordinary trading partnerships are these:—(i.) the shares are transferable without the consent of the other partners; (ii.) any member may relinquish his share, and retire from the concern without obtaining the consent of his copartners, and so get rid of his liability as between himself and his co-adventurers in respect of past debts, and as against all *future* creditors without any notice to the customers or the

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public; and (iii.) it is a feature common to all mining partnerships, and distinguishing them from ordinary trading partnerships, that one partner has no implied authority to pledge the credit of the firm: see *ante*, p. 245. Another frequent distinction between a mining company on the "cost-book" principle and other partnerships is that, as a general rule, such companies have no fixed capital, but when money is required a call is made upon the members: see Batten on the Stannaries Act, 1869.

These local customs, though generally acted upon, were not formerly, apart from strict evidence in each particular case, judicially recognized, and the ordinary law of partnership was held to be applicable to these companies: *Re Bodmin United Mines Co.*, 23 Beav. 370; *Ex parte Palmer*, L. R. 7 Ch. 286; *Hawkins' Case*, 2 K. & J. 253; *Fenn's Case*, 4 De G. M. & G. 285; *Hart* v. *Clarke*, 6 H. L. C. 633; *Sibley* v. *Minton*, 27 L. J. Ch. 53.

The existence of this peculiar system has, however, been from time to time recognized by the legislature; and the constitution of cost-book mining companies and the jurisdiction of the Stannaries Court are now mainly governed, where ordinary partnership law is not applicable, by the Companies Act, 1862, the Stannaries Act, 1869, and the Stannary Procedure Rules of 1876. As has been seen, by sect. 4 of the Companies Act, 1862, a mining company within the jurisdiction of the Stannaries need not be registered. By sect. 68 this jurisdiction is considerably enlarged.

By sect. 35, power is given to the Stannaries Court to rectify the register of members on application (*d*); and by sect. 43, to order an inspection of the register for mortgages; by sect. 120, to enforce its orders in the same way as the Court of Chancery (now the Chancery Division of the High Court). Sect. 124 regulates the bringing of appeals against orders of the Vice-Warden of the Stannaries in a

(*d*) In *In re Penhale, &c., Mining Co.*, L. R. 2 Ch. 398, it was held that the jurisdiction of the superior courts of law and equity in this respect is not thereby excluded.

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winding-up (*e*); and with respect to winding up of such companies generally, see sects. 81, 83, 108, 172: and see *In re Silver Valley Mines*, 18 Ch. D. 472. The principles applicable to a winding-up by the High Court apply equally to a winding-up under the Stannaries Acts: *In re West Devon, etc., Mine*, 27 Ch. D. 106.

Meetings.

Of the Stannaries Act, 1869, sects. 4—8 regulate the nature of meetings and proceedings generally. Under these sections a single shareholder cannot constitute a meeting of the company: *Sharp* v. *Dawes*, 2 Q. B. D. 26.

Rules and regulations.

By sect. 9 the rules and regulations of such company are to be filed at the office of the registrar.

Calls.

By sects. 10—13, prospective calls may be made and payment enforced by the company in the name of the purser: see *Escott* v. *Gray*, 39 L. T. 121; 47 L. J., Ch. 606. In this case *Lindley*, L.J., remarks that since the Judicature Acts there is no reason why a cost-book mining company, though unincorporated, should not sue and be sued in its own name. Payment could not have been so enforced before the Act, even where there was an express agreement to do so: *Hybart* v. *Parker*, 9 C. B., N. S. 209.

Sects. 14 and 15 regulate the transfer of shares; and as to fraudulent transfers, see sect. 35: *King's Case*, L. R. 6 Ch. 196; and *Chynoweth's Case*, 15 Ch. D. 13. Sects. 16—20 enable the company to declare a share forfeited on non-payment of calls. Previous to this Act a company of this kind had no power to do so without express stipulation: see *Clarke* v. *Hart*, 6 H. L. C. 633; and as to the effect of these sections, see *Rule* v. *Jewell*, 18 Ch. D. 660.

Relinquishment of shares.

Sects. 21—23 deal with the relinquishment of shares: see *Ex parte Palmer*, L. R. 7 Ch. 286; *In re Frank Mills Mining Co.*, 23 Ch. D. 52.

(*e*) By sect. 18 of the Judicature Act, 1873, all the jurisdiction and powers of the Court of the Lord Warden of the Stannaries have been transferred to the Court of Appeal; and by sect. 3 of the Appellate Jurisdiction Act, 1876, an appeal will lie to the House of Lords.

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Liability of retiring shareholders.

By sect. 25, on a company being wound up in the Court of the Vice-Warden, or in any other court, a former shareholder, notwithstanding the provisions contained in the Companies Act, 1862, Part 8, sect. 200, shall not be liable to contribute to the assets of the company if he has ceased to be a shareholder for a period of two years or upwards before the mine has ceased to be worked, or before the date of the winding-up order. In *In re Wheal Unity Wood Mining Co.*, 15 Ch. D. 13, it was held that a former member was not liable if he had ceased to be so two years before the winding-up order, although less than two years before the mine stopped working. It would seem that before this section the liability of a member who transferred or relinquished his share continued, as in ordinary partnerships and apart from any question of novation or release, in respect of all debts existing at the date of his retirement: see *In re Bodmin United Mines Co.*, 23 Beav. 370 (*f*).

Incorporated companies.

Incorporated companies are associations which, as regards their legal position, are neither altogether corporations nor altogether partnerships, but partake of the nature of both. The legal existence, rights and liabilities of a corporation proper are wholly distinct from those of its individual members: *vide supra.* But in most cases the members of incorporated companies are, to a greater or less extent, liable in respect of the debts and obligations of the association: see Lindley on Partnership, p. 4. The principal distinction between an incorporated company and a partnership is that any change in the firm by the retirement or introduction of a member *ipso facto* effects a dissolution of the partnership, whereas the members or shareholders of a company are constantly changing by transfer of shares.

(*f*) See further, as to the jurisdiction of the Stannaries Court and the statutes and rules governing cost-book mining companies, and the rights and liabilities of the members, *MacSwinney* on Mines, pp. 416 *et seq.*; *Bainbridge* on Mines, pp. 194 *et seq.*, 572 *et seq.*; and see so much of the Stannaries Act, 1855 (18 & 19 Vict. c. 32), as is not repealed, and the Stannaries Procedure Rules of 1876.

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This difference between a partnership and an incorporated company is thus explained by *James*, L.J., in *Smith* v. *Anderson*, 15 Ch. D., at p. 273: "An ordinary partnership is a partnership composed of definite individuals, bound together by a contract between themselves to continue combined for some joint object, either during pleasure or during a limited time, and is essentially composed of the persons originally entering into the contract with one another. A company or association (which I take to be synonymous terms) is the result of an arrangement by which parties intend to form a partnership which is constantly changing: a partnership to-day consisting of certain members, and to-morrow consisting of some only of those members along with others who have come in, so that there will be a constant shifting of the partnership, a determination of the old and a creation of a new partnership, and with the intention that, so far as the partners can by agreement between themselves bring about such a result, the new partnership shall succeed to the assets and liabilities of the old partnership." See also the observations of the same learned judge to a similar effect in *Baird's Case*, L. R. 5 Ch. at p. 733.

Agreements with companies before formation.

(2.) *Preliminary Contracts, &c.*]—The acquisition of some specific object such as a mine, a factory, a patent, a concession, machinery and plant, &c., is generally essential to enable a company to commence and carry on its intended business; and before or upon the formation of the company it accordingly often becomes necessary for its promoters to arrange with the owners of such property as to the terms of purchase. These arrangements are usually carried out by means of what are called "preliminary contracts."

In such cases the course adopted is sometimes as follows: before the incorporation of the company the promoters (that is to say, the persons engaged in forming the company, and in taking the necessary steps for that purpose: see *Twycross* v. *Grant*, 2 C. P. D. at p. 541) make and execute, or procure

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some person to make and execute, in behalf of the intended company, a contract with the owner for purchase of the property upon the terms agreed upon. The contract should provide that the promoters shall within a specified time procure the incorporation of the company; that the owner shall sell the property, upon the terms agreed on as mentioned in the contract, to the company when incorporated; that the promoters shall within a specified time after the incorporation of the company, procure the execution by the company of a contract for purchase of the property upon the terms fixed by the preliminary contract (*g*); and that if the promoters fail in forming the company or in procuring the execution of the contract for purchase, the owners shall not be bound. Care should also be taken by the promoters to limit their own liability in case the formation of the intended company should fall through, as, in the absence of express provision to the contrary, the liability of the promoters on such a contract is unlimited: *Kelner* v. *Baxter*, L. R. 2 C. P. 174; and the liability will not be determined, even though the company takes up the purchase: *Scott* v. *Lord Ebury*, Ibid. 255. It should therefore be provided in the preliminary contract that if the company does not take up the purchase within the specified time the promoters may rescind the original contract, and that their liability shall cease on the execution by the company of the final contract for purchase: see Palmer, Comp. Prec. p. 2.

Another course not unfrequently adopted is for the promoters to arrange with the owners the terms on which the property is to be sold to the intended company, and to prepare a contract expressed to be made between the owner and the company, and embodying the arranged terms. This contract will

(*g*) This stipulation for a *fresh* contract by the company is necessary because a company has no power to adopt or ratify a contract entered into by any person on its behalf before its incorporation: *Empress Engineering Co.*, 16 Ch. D. 125; see also *Melhado* v. *Porto Allegre, &c. Co.*, L. R. 9 C. P. 503; *Re Northumberland Avenue Hotel Co.*, 33 Ch. D. 16.

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remain unexecuted until after the incorporation of the company, but will then, if its terms are approved of by the company, be executed by both parties. In favour of adopting this course it is sometimes urged that it avoids any suspicion of the purchase being forced on the company, and also that it does away with the necessity for a second contract. But on the other hand it is obvious that the instrument, until execution, has no binding force as a contract, and consequently it would be open to the owner after the company has been duly incorporated, to refuse to sell his property on the terms arranged, and so the undertaking might be frustrated, and the trouble and expense incurred in forming the company be entirely thrown away. This consideration will, of course, lose much, if not all its force, where no material interval of time elapses between the preparation of the contract and the incorporation of the company, or where the vendor is also the promoter of the company.

Whichever course is adopted the articles of association generally refer to the agreement and empower the directors to affix the seal of the company to the contract between the vendor and the company for purchase of the property on the terms agreed on. Sometimes, however, the articles contain no such express reference, but contain a general power for the directors to purchase the property on such terms as they shall think proper in the interest; such a general power will be sufficient to authorise the directors to execute the specific agreement on behalf of the company: see *Overend & Gurney Co.* v. *Gibb*, L. R. 5 H. L. 480.

With regard to contracts to sell property to a company in consideration of shares it must be borne in mind that sect. 25 of the Companies Act, 1867 (30 & 31 Vict. c. 131), enacts that:—

Manner in which shares are to be issued and held.

"Every share in any company shall be deemed and taken to have been issued, and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing, and filed with the registrar of joint-stock companies at or before the issue of such shares."

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The effect of this section is to prohibit shares issued from being paid for otherwise than in cash, except under a registered contract: *Re British Farmers' Co.*, 7 Ch. D. 533.

The prospectus.

In connection with the formation of a company, which is intended to rely on the public for support, it is usual to issue a prospectus stating the nature and objects of the undertaking, the amount of capital required, and the number and value of the shares intended to be issued, and inviting applications for shares (*h*). By sect. 38 of the Companies Act, 1867, it is enacted:—

Stat. 30 & 31 Vict. c. 131.

Prospectus, &c., to specify dates and names of parties to any contract made prior to issue of prospectus, &c.

"Every prospectus of a company and every notice inviting persons to subscribe for shares in any joint-stock company shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company or otherwise, and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless he shall have had notice of such contract."

As to what contracts must be noticed in the prospectus see *Gover's Case*, 1 Ch. D. 200; *Twycross* v. *Grant*, 2 C. P. D. 469; *Sullivan* v. *Mitcalfe*, 5 C. P. D. 455; *Bagnall* v. *Carlton*, 6 Ch. D. at p. 406; *Arkwright* v. *Newbold*, 17 Ch. D. 301: see also Palmer, Comp. Prec. 242; Healey, Comp. Law and Pract. 54.

Misrepresentation.

Care must be taken in preparing a prospectus to avoid any concealment of material facts or any misrepresentation which might influence persons in applying for shares; as otherwise a person who has agreed to take shares on the faith of the statements of the prospectus will be entitled to repudiate his agreement: thus relief has been granted where the prospectus did not truly state the nature and objects of the undertaking: *Downes* v. *Ship*, L. R. 3

(*h*) Formerly the issue of the prospectus generally preceded the formation of the company, but now it is very usual to postpone the issue until after the memorandum and articles of association have been registered, and the company thereby incorporated.

H. L. 343; the amount of capital: *Kent* v. *Freehold Land Co.*, L. R. 3 Eq. 122; *Elder* v. *New Zealand Land Co.*, 30 L. T. 285; *Sharply* v. *Louth Rail. Co.*, 2 Ch. D. 663; and as to the number and value of shares: *Blake's Case*, 34 Beav. 639; *Ross* v. *Estates Investment Co.*, L. R. 3 Ch. 682. See further, as to what misrepresentation in a prospectus is sufficient to entitle a subscriber to be relieved from his obligation to take shares, *Henderson* v. *Lacon*, L. R. 5 Eq. 249; *Hallows* v. *Fermé*, L. R. 3 Ch. 467; *Arkwright* v. *Newbold*, 17 Ch. D. 301; *Smith* v. *Chadwick*, 9 App. Ca. 187; *Bellairs* v. *Tucker*, 13 Q. B. D. 562.

Liability of directors issuing fraudulent prospectus.

Directors issuing a fraudulent prospectus are liable to an action for damages sustained by a person who has been induced to take shares on the faith of the prospectus: *Gover's Case*, 1 Ch. D. 182; *Twycross* v. *Grant*, 2 C. P. D. 503; *Sullivan* v. *Metcalfe*, 5 C. P. D. 455. And by the stat. 24 & 25 Vict. c. 96, s. 84, directors, &c., making, circulating, or publishing any written statement or account which they know to be false with intent to induce persons to become shareholders in a public company are guilty of a misdemeanor and punishable accordingly.

Application for, and allotment of shares.

With the prospectus is issued a form of application to take shares in the company, and those who sign and send in these documents become on allotment subscribers to the undertaking: *Burke* v. *Lechmere*, L. R. 6 Q. B. 297. If the application is acceded to, a letter of allotment (*i*) is sent to the applicant informing him how many shares are allotted to him and requiring him to pay a deposit. On receipt of notice of the allotment, the contract to take the shares allotted is complete: *Pellatt's Case*, L. R. 2 Ch. 527; *Household Fire Insurance Co.*, 4 Ex. D. 216.

Memorandum of association.

(3.) *Memorandum of Association.*]—With regard to the mode of incorporating a joint-stock company the

(*i*) A letter of allotment requires a penny stamp: see stat. 33 & 34 Vict. c. 97, sect. 3.

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Companies Act, 1862 (25 & 26 Vict. c. 89), enacts as follows:—

Mode of forming company.

Sect. 6. "Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company, with or without limited liability."

It is not necessary for incorporation under this Act that the acquisition of gain should be the object of the company, and sect. 23 of the Companies Act, 1867 (30 & 31 Vict. c. 131), provides that a limited company formed "for purposes of promoting commerce, art, science, religion, charity, or any other useful object" may, by licence of the Board of Trade, be registered without the addition of the word "limited" to its name. But a trades union cannot be registered under the Companies Acts: see stat. 34 & 35 Vict. c. 31, s. 5. The registrar's certificate that the company is incorporated is conclusive as to the incorporation of the company, even though it should turn out that one of the seven subscribers was an infant, or that the certificate had otherwise been obtained irregularly: *Nassau Phosphate Co.*, 2 Ch. D. 610; see *Glover* v. *Giles*, 18 Ch. D. 173.

Who may subscribe the memorandum.

The term "person" includes another corporate body; a limited company may become a shareholder in another limited company, if authorised so to do by its own memorandum and articles of association: *Re Barned's Banking Co., Ex parte Contract Corporation*, L. R. 3 Ch. 105; *Royal Bank of India's Case*, L. R. 4 Ch. 252. An association which is actually complete and existing in a foreign country cannot register itself as a company under the Companies Acts: *Bulkeley* v. *Schutz*, L. R. 3 P. C. 764; nor it would seem an association which contemplates that its undertaking shall be altogether carried out and managed abroad: see *Union Bank of Calcutta*, 3 De G. & S. 253; *Princess of Reuss* v. *Bos*, L. R. 5 H. L. at p. 194. But a company formed, whether by persons resident in this country or by foreigners resident abroad, for carrying out an undertaking in

a foreign country may be registered under the Acts, provided that the management and conduct of the business is to some extent to take place in this country: *Princess of Reuss* v. *Bos*, L. R. 5 H. L. 176.

Liability.

With regard to the liability of shareholders the Act of 1862 enacts as follows:—

Mode of limiting liability of members.

Sect. 7. "The liability of the members of a company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up."

By the Act of 1867, sects. 4—8, it is provided that the liability of the directors or managers of a limited company, or of the managing director, may, if so provided by the memorandum of association, be unlimited. The limitation of the liability must be fixed by the memorandum, and such limitation cannot be subsequently altered to the prejudice of creditors: *Dent's Case*, L. R. 8 Ch. at p. 775. But the articles may extend the liability of shareholders beyond the limit fixed by the memorandum for the purpose of meeting certain specified debts: *Maxwell's Case*, L. R. 20 Eq. 585; *McKewan's Case*, 6 Ch. D. 447.

Contents of memorandum.

The Act of 1862 contains the following enactments as to the contents of the memorandum of association:—

Memorandum of association of a company limited by shares.

Sect. 8. "Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of association shall contain the following things; (that is to say,)

"(1.) The name of the proposed company, with the addition of the word 'Limited' as the last word in such name:

"(2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate:

"(3.) The objects for which the proposed company is to be established:

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"(4.) A declaration that the liability of the members is limited:

"(5.) The amount of capital with which the company proposes to be registered, divided into shares of a fixed amount:

"Subject to the following regulations:

"(1.) That no subscriber shall take less than one share:

"(2.) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes."

Memorandum of association of a company limited by guarantee.

Sect. 9. "Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, herein-after referred to as a company limited by guarantee, the memorandum of association shall contain the following things; (that is to say,)

"(1.) The name of the proposed company, with the addition of the word 'Limited' as the last word in such name:

"(2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate:

"(3.) The objects for which the proposed company is to be established:

"(4.) A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up, during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount."

Memorandum of association of an unlimited company.

Sect. 10. "Where a company is formed on the principle of having no limit placed on the liability of its members, herein-after referred to as an unlimited company, the memorandum of association shall contain the following things; (that is to say,)

"(1.) The name of the proposed company:

"(2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate:

"(3.) The objects for which the proposed company is to be established."

It will be observed that the Act requires every memorandum of association to state the name, situa-

tion of registered office, and objects of the company. In the case of an unlimited company the memorandum will contain only three clauses containing these statements.

Name of company.

No company is to be registered under a name identical with or so nearly resembling the name of an existing company as to be calculated to deceive, unless such subsisting company is in course of being dissolved and consents to the registration: and if a company is registered under a name identical with, or closely resembling that of an existing company, without the consent of the latter, the name of the former may be changed: see sect. 20 of the Act of 1862. In *Hendriks* v. *Montagu*, 17 Ch. D. 638, an injunction was granted at the instance of "The Universal Life Assurance Society" to restrain the registration of a proposed company as "The Universe Life Assurance Association": and see *Estcourt* v. *Estcourt Hop Essence Co.*, L. R. 10 Ch. 276. But it would seem that the resemblance between the names must be very close to support an injunction: see *The London Assurance Corporation* v. *The London and Westminster Assurance Corporation*, 9 Jur. N. S. 843; *The Colonial Life Assurance Co.* v. *The Home and Colonial Assurance Co.*, 33 Beav. 548; *The Merchant Banking Company of London* v. *The Merchants Joint-Stock Bank*, 9 Ch. D. 560.

As to change of name, see *post*, p. 337.

Registered office.

Every memorandum must state where the registered office of the company is to be situate; and such statement will determine to what jurisdiction the company is to be subject: see sects. 81 and 174, sub-sect. 3 of the Act of 1862.

Memorandum to state object of company.

Every memorandum must also state the objects for which the company is established. These objects must not be departed from except so far as is expressly permitted by statute, and any contract entered into by the directors of a company relating to an object not specified in the memorandum is *ultra vires*, and utterly void so as not to be capable of ratification by the company: *Ashbury Railway Carriage, &c., Co.* v. *Riche*, L. R. 7 H. L. 653. Neither as regards the objects of the company, nor

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in any other essential respect is the memorandum capable of alteration, either by the articles or by subsequent resolution, except so far as is specially provided by statutory enactment: *Winstone's Case*, 12 Ch. D. 239; *Ashbury* v. *Watson*, 30 Ch. D. 376.

Statutory powers of changing object (*k*).

The Act of 1862, however, confers on companies limited by shares certain powers with regard to dealing with its *capital;* sect. 12 of the Act enacts as follows:—

Power of certain companies to alter memorandum of association.

"Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner herein-after mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock, but, save as aforesaid, and save as is herein-after provided in the case of a change of name, no alteration shall be made by any company in the conditions contained in its memorandum of association."

By the Act of 1867 it is provided that any company limited by shares may, by special resolution, reduce its capital: sect. 9; or divide its shares into shares of smaller amount: sect. 21. And sect. 8 of the same Act empowers any existing limited company, by special resolution, to render unlimited the liability of its directors or managers, or managing director. And by the Act of 1877 (40 & 41 Vict. c. 26), sect. 5, any company limited by shares may, if authorised by its regulations, as originally framed, or as altered by special resolution, reduce its capital by the cancellation of unissued shares.

Moreover, by the Companies Act, 1879 (42 & 43 Vict. c. 76), sect. 5, a limited company is empowered

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(*k*) Articles of association often contain clauses empowering the company to pass special resolutions for the purposes mentioned in the text. The statutory powers here referred to render the insertion of such clauses unnecessary, and they are accordingly omitted from the Precedent of Articles of Association given in this volume.

For clauses authorizing *ab initio* the purposes mentioned in sect. 12 of the Act of 1862 and sect. 5 of the Act of 1877, see *post*, Precedent XXVII., p. 523.

by special resolution to create a reserve liability. And by the Companies Act, 1880 (43 Vict. c. 19), sect. 3, accumulated profits may, by special resolution, be returned to shareholders in reduction of paid-up capital.

The Act of 1862 also contains the following power for a company to change its *name*:—

Power of companies to change name.

Sect. 13. "Any company under this act, with the sanction of a special resolution of the company passed in manner herein-after mentioned, and with the approval of the Board of Trade testified in writing under the hand of one of its secretaries or assistant secretaries, may change its name, and upon such change being made the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name."

But although (except as regards the particulars above mentioned) the memorandum cannot be altered, yet, for the purpose of construction, the memorandum and articles must be read together, and the articles may be allowed to some extent to explain or supplement the memorandum; see *infra*.

Where it is found necessary, for the purpose of carrying out the undertaking of a company, to extend or vary the objects stated in its memorandum of association, the only way of acquiring the power so to do is by dissolving and reconstructing the company, as to which, see *post*, p. 354.

Form and contents of objects clause.

According to the former practice, now almost obsolete, the memorandum of association usually contained only a concise statement of the main objects of the company, and wide and elaborate powers were inserted in the articles purporting to authorize the directors to enter into such transactions as appeared necessary to, or convenient for commencing and carrying on the proposed undertaking. But this course was found to be open to the objection that it

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exposed the company to the serious risk of finding itself hampered in the progress of its undertaking by reason of some of the powers contained in the articles being unauthorized by the object clause in the memorandum, and therefore incapable of being exercised by the directors. Care should therefore be taken to protect the company, as far as possible, from this risk by enumerating in the memorandum, not only the main object of the company, but also all ancillary objects which it is considered might conduce, not only at the outset of the undertaking, but during its progress, and having regard to probable developments thereof, and other circumstances, to the successful and profitable conduct of the business of the company. This course also possesses the manifest advantage of furnishing the shareholders (*l*) with a clear statement of the nature and scope of the undertaking, so as to enable them readily to detect and raise objections to any attempt on the part of the company to enter into transactions of an unauthorized character. If this course is adopted it will only be absolutely necessary to insert in the articles a general power for the directors to do all such things as are necessary or expedient for carrying into effect the objects of the company as stated in the memorandum of association; but see *post*, p. 550, note (*l*).

General words.

It is usual for the 3rd clause of the memorandum to conclude with the following general words:—"And to do such other things as are incidental or conducive to the attainment of the aforesaid objects, or any of them." As regards the effect of these words, *Page Wood*, V.-C., observed in the case of *The Joint Stock Discount Co.* v. *Brown*, L. R. 3 Eq. at p. 150, that they merely conferred powers "of doing something *bonâ fide* connected with the objects to be attained, and in the ordinary course of business adapted to their attainment." The general rule seems to be that the general words will only cover

Copies of memorandum and articles to be given to members.

(*l*) By sect. 19 of the Act of 1862 "a copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of the sum of one shilling or such less sum as may be prescribed by the company for each copy.

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such objects as are strictly but fairly ancillary to such objects as are specified in detail by the memorandum of association: see *Re Peruvian Railway Co.*, L. R. 2 Ch. 623; *International Contract Co.'s Case*, W. N. 1869, p. 24; *Ashbury Co.* v. *Riche*, L. R. 7 H. L. 653; *German Date Coffee Co.*, 22 Ch. D. 169; *Haven Gold Mining Co.*, Ibid. 151. See further as to the operation of these words, *Simpson* v. *Westminster Palace Hotel Co.*, 8 H. L. C. 712; *Royal Bank of India's Case*, L. R. 4 Ch. 252; *Re Baglan Hall Colliery Co.*, L. R. 5 Ch. 356; *New Sombrero Co.* v. *Erlanger*, 5 Ch. D. 73; *Att.-Gen.* v. *Great Eastern*, 5 App. Ca. 473; *Guiness* v. *Land Corporation of Ireland*, 22 Ch. D. 349; *Financial Ass.* v. *Kelk*, 26 Ch. D. 107.

Limitation of liability of members by guarantee.

In the case of a company the liability of whose members is limited by guarantee (sect. 9, *ante*, p. 334), a fourth clause must be inserted in the memorandum of association with regard to the guarantee, which, it must be borne in mind, is a guarantee of so much per member, and not of so much per share. Companies limited by guarantee are generally formed for objects requiring no trading or working capital, for at all events until winding up they cannot obtain from their members any contribution to capital. The amount to be specified in the declaration contained in clause 4 of the memorandum will depend upon the extent to which the company will require credit for the purposes of its undertaking. If the credit required is likely to be large, the amount of the guarantee will have to be proportionably increased. Companies adopting this form of association are, however, for the most part formed for objects requiring no great amount of credit, such as chambers of commerce, educational, scientific, literary, and artistic institutions, &c.; and also mutual insurance societies which, except as regards the members *inter se*, do not require extensive credit (*m*). In

Liability of members of mutual insurance association.

(*m*) The debts and liabilities as to which a declaration is required by sect. 9 of the Act of 1862 are those of the association against its own members, and not, in the case of a mutual insurance society, the debts and liabilities to which the members by the rules of the society are to contribute as insurers or assured: *Lion Insurance Assoc.* v. *Tucker*, 12 Q. B. D. 176.

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these cases the specified guarantee will generally be of a small amount, (say) £5, or even £1, per member.

Companies limited by shares.

In addition to the clauses relating to the name, office, and objects of the company, the memorandum of association of a company limited by shares must contain two other clauses.

Liability.

The fourth clause must declare that the liability is limited; but this declaration does not prevent the members from subsequently extending their liability as between themselves: *Hill's Case*, L. R. 20 Eq. 59; *Maxwell's Case*, Ibid. 585; *Peninsula Co.* v. *Fleming*, 27 L. T. N. S. 93; *M'Kewan's Case*, 6 Ch. D. 447. The fifth clause must state the amount of the proposed capital, and the shares into which it is to be divided.

Capital.

It has been seen (*ante*, p. 336), that the registered capital may be subsequently varied by special resolutions. If it is intended that the capital should consist partly of preference shares and partly of deferred shares, it is usual to state the fact in this clause; but it is not necessary to refer to a future issue of preference shares in the memorandum, as it is now settled a power to issue such shares may be given by the articles: *Harrison* v. *Mexican Rail. Co.*, L. R. 19 Eq. 358; *Re South Durham Brewery Co.*, 31 Ch. D. at p. 271. But if neither the memorandum nor the articles contain any power to issue preference shares, the issue of such shares will be restrained by injunction: *Hatton* v. *Scarborough Cliff Co.*, 2 Dr. & Sm. 514. The power to issue such shares can, it would seem, in such a case only be obtained by a reconstruction of the company, as to which see *post*, p. 354.

Sect. 14 of the Act of 1862 provides that—

"In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes."

It has been seen that by sect. 8 (*ante*, p. 334), each subscriber in the case of a company *limited by shares* must take one share at least, and write opposite his name the number of shares he takes.

As to the stamp, execution, and effect of the memorandum, the Act of 1862 enacts as follows :—

Stamp, signature and effect of memorandum of association.

Sect. 11. "The memorandum of association shall bear the same stamp as if it were a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and that attestation shall be a sufficient attestation in Scotland as well as in England and Ireland: It shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act."

Every memorandum of association will therefore be liable to a stamp duty of 10*s.*; in addition to which certain fees are payable to the registrar in respect of registering the memorandum under sect. 17 of the Act: see *post*, p. 348.

Effect of subscribing memorandum.

The effect of executing the memorandum of association is *ipso facto* to constitute the person signing it a member of the company.

Definition of "member."

Sect. 23. "The subscribers of the memorandum of association of any company under this Act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members herein-after mentioned; and every other person who has agreed to become a member of a company under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company."

The memorandum conclusively binds the subscribers to take from the company as many shares as they have subscribed for, and requires no letter of allotment to complete the obligation: *Re London and Provincial, &c. Co.*, 5 Ch. D. 525; and if a person signs a memorandum of association for a specified number of shares, the directors have no power to dispense with the necessity of his taking such shares: *Evan's Case*, L. R. 2 Ch. 427. The shares subscribed for are *primâ facie* shares not paid up: *Maynard's Case*, L. R. 9 Ch. 60; and

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the obligation to take the shares subscribed for is not satisfied by the subsequent allotment of fully paid shares: *Migotti's Case,* L. R. 4 Eq. 238; see *Forbes and Judd's Case,* L. R. 5 Ch. 270; *Dent's Case,* L. R. 8 Ch. 768. A clause in the articles that the shares subscribed for in the memorandum shall be considered fully paid shares is void: *Crickmer's Case,* L. R. 10 Ch. 614; *Firmstone's Case,* L. R., 20 Eq. 525.

Shares subscribed for to be paid in money or money's worth.

In the absence of a special contract in writing duly filed (see *ante,* p. 329), the shares subscribed for must be paid for in cash; and such contract must be entered into before the shares are issued, and must specifically refer to the particular shares, and to the consideration, in property or service, for which they are issued, free from liability to payment in cash, to the subscriber: *Fothergill's Case,* L. R. 8 Ch. 270; *Coat's Case,* L. R. 17 Eq. 169; *Anderson's Case,* 7 Ch. D. 75. In any case the shares must be paid for in money or money's worth, as to which see *Drummond's Case,* L. R. 4 Ch. 772; *Pell's Case,* L. R. 5 Ch. 11; *Baglan Hall Co., Ibid.* 346; *Jones' Case,* L. R. 6 Ch. 48.

Articles of Association.]—With regard to the articles of association of a joint stock company, the Act of 1862 contains the following enactments:—

Regulations to be prescribed by articles of association.

Sect. 14. "The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient: The articles shall be expressed in separate paragraphs, numbered arithmetically: They may adopt all or any of the provisions contained in the table marked A. in the first schedule hereto: They shall, in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the company

proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration" (*n*).

Application of Table A.

Sect. 15. "In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the table marked A. in the first schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered."

Function of articles of association.

The function of the articles is to prescribe the mode in which the objects stated in the memorandum are to be attained, to define the powers of the directors, and to regulate the rights and liabilities of the members, as between themselves and the company. The memorandum of association has been defined by Lord *Selborne*, in *Ashbury Railway Carriage Co.* v. *Riche*, L. R. 7 H. L., at p. 693, as the "fundamental and (except in certain specified particulars) the unalterable law" of the company; and in the same case (at p. 668) Lord *Cairns*, C., thus described the relation of the articles to the memorandum: "With regard to the articles of association, those articles play a part subsidiary to the memorandum of association. They accept the memorandum of association as the charter of incorporation of the company, and so accepting it, the articles proceed to define the duties, the rights and powers of the governing body as between themselves and the company at large, and the mode and form in which the business of the company is to be carried on, and the mode and form in which changes in the internal regulations of the company may from time to time be made. With regard, therefore, to the memorandum of association, if you find anything which goes beyond that memorandum, or is not warranted by it, the question will arise whether that which is so done is *ultra vires* not only of the directors of the company but of the company itself.

(*n*) The remainder of this section relates to the memorandum of association, and is set out *ante*, p. 340.

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With regard to the articles of association, if you find anything which, still keeping within the memorandum of association, is a violation of the articles of association, or in excess of them, the question will arise whether that is anything more than an act *extra vires* the directors, but *intra vires* the company."

Articles controlled by memorandum.

The memorandum and articles of association must be read together, and must, if possible, be construed so as to render them consistent with each other: see *Felgate's Case*, 2 De G., J. & S. 456; *Anderson's Case*, 7 Ch. D. 75. But if the articles conflict with the memorandum, the latter must prevail, for it is unalterable, except in certain particulars specified by statute: see *ante*, p. 336. But the articles may, in some cases, be referred to to explain or supplement the memorandum on matters with regard to which the memorandum is ambiguous or silent, provided such matters relate to the internal questions affecting the company and its members, and not the rights of strangers, which are fixed by the memorandum: see *Harrison* v. *Mexican Rail. Co.*, L. R. 19 Eq. 358; *Phœnix Bessemer Co.*, 32 L. T. 854; *Anderson's Case*, 7 Ch. D. 75; *Re South Durham Brewery Co.*, 31 Ch. D. 26.

General remarks on the form and contents of articles of association.

Articles of association of companies, whether intended to be registered or not, are usually constructed on lines very similar to those of ordinary partnerships, but with such modifications as are necessary by reason of the incidents which distinguish a company from a partnership, viz., that companies are generally composed of a large number of members, many of whom are unknown to each other; that the capital is divided into shares of comparatively small amounts, which shares are intended to be readily transferable at the will of holders, without interfering with the continuity of the association or its affairs; that the management and conduct of the business is delegated to directors elected by and subject (in a greater or less degree) to the control of the general body of shareholders; that, in the case of registered companies, various statutory regulations, as interpreted by judicial

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decisions, must be complied with; and other considerations which have been indicated in the foregoing pages. The following general remarks, as to the form and contents of articles of association, refer to joint stock companies intended to be registered and incorporated under the Companies Acts.

No statement of the parties to the articles, by reference to any schedule or otherwise, is necessary or usual; nor is any operative part, such as "it is hereby agreed as follows," &c. With regard to the stamp and signature of articles of association, and the effect of such signature, sect. 16 of the Act of 1862 enacts as follows:—

Stamp, signature, and effect of articles of association.

"The articles of association shall be printed, they shall bear the same stamp as if they were contained in a deed (*o*), and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and such attestation shall be a sufficient attestation in Scotland as well as in England and Ireland: When registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Act (*p*); and all monies payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company, and in England and Ireland to be in the nature of a specialty debt."

Name, office, and objects of company.

A partnership deed usually commences with clauses stating the style of the firm, the place where the business is intended to be carried on, and the nature of the business. The name, registered office, and objects of the company are required to be stated in the memorandum of association of every com-

(*o*) Articles of association are consequently liable to a stamp duty of 10*s.*; and they are also liable to a registration fee of 5*s.*, see *post*, p. 349.

(*p*) Every member is entitled to a copy of the memorandum and articles of association, on payment of a fee not exceeding 1*s.*, see sect. 19 of the Act of 1862.

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pany, and it is not necessary, though it is not unusual, to repeat these statements in the articles; and if any statement with regard to these matters is made in the articles inconsistent with the memorandum, such statements will be inoperative: *ante*, p. 344. A clause may, however, be inserted, if required, providing for the establishment of branch offices in the United Kingdom or elsewhere, in addition to the registered office of the company.

Interpretation clause.

It is a usual and convenient practice to commence the articles with an interpretation clause defining such terms as seem to be open to misconstruction or question. In framing this clause it will be well to call attention to particular terms used in the articles to which a special meaning has been attached by statute, by providing that such terms shall bear the meaning so attached to them, referring in each case to the particular Act and section containing the statutory definition. Such terms are, for instance, "special" and "extraordinary resolutions." Such reference will indicate to shareholders who may not be conversant with the Companies Acts where they may find what is the statutory meaning of those terms. But it does not seem to serve any useful purpose to overload the interpretation clause with definitions of words which bear an obvious meaning, *e.g.*, by providing that "the directors shall mean the directors for the time being of the company," and the like.

Table A.

In the articles of a company limited by shares a clause should be inserted excluding or modifying the regulations contained in Table A. Companies limited by shares are often registered without any articles of association, in which case the regulations contained in Table A. will govern the company, except so far as they may be subsequently varied by special resolution, or on application to the Board of Trade: see sects. 15, 50, and 71 of the Act of 1862. This course should not be adopted without a careful perusal of "Table A.," with reference to the nature and scope of the intended undertaking, and the manner in which it is proposed to place the capital and conduct the business of the company, as other-

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wise serious difficulties and inconvenience may not improbably arise. Sometimes articles adopt "Table A.," excluding certain specified clauses, and contain substituted or additional clauses of a special nature which seem necessary or convenient for carrying on the particular business. But this course is not to be recommended. It is much more satisfactory that "Table A." should be altogether excluded, even though many of its regulations should reappear *verbatim* in the articles, so that the articles of association may (with the annexation thereto of any special resolutions passed from time to time) contain a complete code of the regulations governing the company, for the information of the directors and shareholders. The additional expense so incurred will not be considerable, and is not likely to be of material importance, except in the case of a very small concern.

Arrangement of clauses.

The clauses of articles of association may be conveniently arranged in three principal divisions, viz.,—(i.), preliminary clauses; (ii.), clauses relating to capital and the issue and transfer of shares; and (iii.), clauses relating to the conduct of business.

Adoption of preliminary contracts, &c.

(i.) Among the preliminary clauses will be inserted, if required, a clause empowering the directors to adopt and carry out on behalf of the company any preliminary contracts for the purchase of property, as to which see *ante*, p. 327; or, in the case of a reconstructed or amalgamating company, the agreement or agreements for transfer by the liquidators of the property of the company or companies intended to be dissolved: see *post*, p. 354. Other preliminary clauses will be noticed in the notes to the following Precedents.

(ii.) In the case of a company limited by shares, the amount of the intended capital, and the number and amount of the shares into which the capital is to be divided, must be stated in the memorandum of association. But in the case of a company limited by guarantee, or unlimited and having a capital divided into shares, these matters should be stated in the articles of association. In the second division of clauses will be successively in-

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serted clauses containing provisions as to the allotment of shares, the issue of share certificates, the transfer and transmission of shares, the issue of share warrants, calls, forfeiture of shares, the conversion of shares into stock, and the reduction or increase of capital, including, if desired, a clause conferring borrowing powers on directors.

(iii.) The clauses relating to the conduct of the business of the company will include provisions for the holding of general meetings of shareholders, and the powers of such meetings, and the regulation of the voting and proceedings thereat; the number, qualifications, powers and duties of directors, managing director, and officers; the keeping and audit of accounts; and the service of notices; and the articles will usually conclude with an arbitration clause and provisions as to the events and the mode in which the company is to be dissolved, whether on reconstruction, or amalgamation, or otherwise.

It will be more convenient to consider in detail in the notes to the following Precedents than in this place such of the provisions, whether ordinary or special, falling under the various heads above referred to, as seem to call for remark.

Registration of Memorandum and Articles of Association.]—The following are the provisions of the Act of 1862 with regard to the registration of the memorandum of association and articles of association of joint-stock companies:

Registration of memorandum of association and articles of association, with fees as in Tables B. and C. (*q*).

Sect. 17. "The memorandum of association and the articles of association, if any, shall be delivered to the Registrar of Joint-Stock Companies hereinafter mentioned, who shall retain and register the same: There shall be paid to the registrar by a company having a capital divided into shares, in respect of the several

(*q*) The tables of fees referred to in sect. 17 are as follows:—

TABLE B.

TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES by a Company having a Capital divided into Shares.

	£	s.	d.
For registration of a company whose nominal capital does not exceed £2,000, a fee of	2	0	0

matters mentioned in the Table marked B. in the First Schedule hereto, the several fees therein specified, or such smaller fees as

	£	s.	d.
For registration of a company whose nominal capital exceeds £2,000 the above fee of £2, with the following additional fees, regulated according to the amount of nominal capital; (that is to say,)			
For every £1,000 of nominal capital, or part of £1,000, after the first £2,000, up to £5,000	1	0	0
For every £1,000 of nominal capital, or part of £1,000, after the first £5,000, up to £100,000	0	5	0
For every £1,000 of nominal capital, or part of £1,000, after the first £100,000	0	1	0
For registration of any increase of capital made after the first registration of the company, the same fees per £1,000, or part of a £1,000, as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no company shall be liable to pay in respect of nominal capital, on registration or afterwards, any greater amount of fees than £50, taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document hereby required or authorised to be registered, other than the memorandum of association	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, a fee of	0	5	0

TABLE C.

TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES by a Company not having a Capital divided into Shares.

	£	s.	d.
For registration of a company whose number of members, as stated in the articles of association, does not exceed 20	2	0	0
For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100	5	0	0

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the Board of Trade may from time to time direct; and by a company not having a capital divided into shares, in respect of the several matters mentioned in the Table marked C. in the First Schedule hereto, the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct; All fees paid to the said registrar in pursuance of this Act shall be paid into the receipt of her Majesty's Exchequer, and be carried to the account of the Consolidated Fund of the United Kingdom of Great Britain and Ireland."

Effect of registration.

Sect. 18. "Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited: The subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a

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	£	s.	d.
For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of £5, with an additional 5s. for every 50 members or less number than 50 members after the first 100.			
For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of such increase	0	5	0
Provided that no one company shall be liable to pay on the whole a greater fee than £20 in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company, except such companies as are by this act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document hereby required or authorised to be registered, other than the memorandum of association	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, a fee of	0	5	0

common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned: A certificate of the incorporation of any company given by the registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with." Of Joint Stock Companies.

As to the certificate of registration being conclusive as to the incorporation of the company see *ante*, p. 332.

Special Resolutions.]—It has been seen that the various Companies Acts have conferred on companies limited by shares powers of modifying the conditions contained in the memorandum of association in certain particulars by special resolution: see *ante*, p. 336. And subject to the Companies Acts, and to the conditions stated in the memorandum of association, a company has power by a special resolution to alter its articles of association in any other respect; and a company cannot by a clause in the articles deprive itself of the power of so altering any particular regulation contained in the articles: *Walker* v. *London Tramways Co.*, 12 Ch. D. 705.

The provisions of the Act of 1862 relating to the alteration of articles of association by special resolution are as follows:—

Sect. 50. "Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any company formed under this act may, in general meeting from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association or in the Table marked A. in the First Schedule, where such table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution." Power to alter regulations by special resolution.

Sect. 51. "A resolution passed by a company under this Act Definition of

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special resolution.

shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy (in cases where by the regulations of the company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month from the date of the meeting at which such resolution was first passed: at any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same: notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company: in computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company."

Provision where no regulations as to meeting.

Sect. 52. "In default of any regulations as to voting every member shall have one vote, and in default of any regulations as to summoning general meetings a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the Table marked A. in the First Schedule hereto, and in default of any regulations as to the persons to summon meetings five members shall be competent to summon the same, and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside."

An "Extraordinary Resolution" is thus defined by sect. 129 of the Act:—

Definition o extraordinary resolution.

"For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined."

Where no poll is demanded, the three-fourths majority mentioned in sect. 51 (*supra*) is a *numerical* majority of the members present in person or by proxy: *Horbury Bridge Co.*, 11 Ch. D. 109; *Re Chillington Iron Co.*, 29 Ch. D. 159. By "not less than fourteen days" is meant fourteen *clear* days exclusive of the respective days of meeting: *Re Railway Sleepers Supply Co.*, 29 Ch. D. 204; see *Re Miller's Dale, &c., Lime Co.*, 31 Ch. D. 211. The notice convening a meeting to consider a resolution under sect. 51 must strictly comply with the requirements of the Act in relation thereto, and must, whenever it is intended to submit a resolution in favour of proceeding under a particular section, clearly indicate that it is intended so to proceed: see as to proceeding under sect. 129, *Bridport Old Brewery Co.*, L. R. 2 Ch. 191; and as to proceedings under sect. 161, *post*, p. 356. Otherwise the resolution will be absolutely void, and incapable of confirmation at a subsequent meeting: *Lawes' Case*, 1 De G., M. & G. 421.

Remarks on the foregoing sections.

The Act of 1862 contains the following further provisions with regard to special resolutions:—

Registry of special resolutions.

Sect. 53. "A copy of any special resolution that is passed by any company under this Act shall be printed and forwarded to the registrar of joint stock companies, and be recorded by him: If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty."

Copies of special resolutions to be annexed to articles.

Sect. 54. "Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution: where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of one shilling, or such less sum as the company may direct: and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of

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which such default is made; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty."

Reconstruction and amalgamation of companies.

Reconstruction and Amalgamation of Companies.]—The subject of the compulsory winding-up of companies is foreign to the scope of this work; but some remarks will here be made with regard to the voluntary winding-up of a company with a view to its reconstruction, or its amalgamation with another company.

Reconstruction.

Reconstruction is the transfer of the assets and business of a single existing company to a new company formed for the purpose of taking over such assets and business, and of carrying on the undertaking formerly carried on by the original company under altered conditions. The necessity for reconstruction arises, where it is desired to vary or extend the objects of the company as stated in its memorandum of association: see *ante*, p. 337; or to issue preference shares, where no power to do so is contained either in the memorandum or in the articles: see *ante*, p. 340; or to issue preference shares entitling the holders thereof to rank in priority to the holders of preference shares previously issued (*r*). Reconstruction may also be convenient where it is desired to carry out arrangements which would amount to a reduction of the capital of the company, without the necessity of complying with the conditions to be observed on the exercise of the statutory powers of reducing capital imposed by sects. 9—20 of the Companies Act, 1867, and by the Companies Act, 1877.

(*r*) Lord Justice *Lindley* lays down the general principle that "no resolution of a company can possibly vary the rights of different classes of duly created shares:" Lind. Part. 797. This principle has been affirmed in many decided cases negativing the power of companies to issue preference shares without express authority. And the particular question referred to in the text, viz., that it is *ultra vires* for a company to issue new preferred shares to rank in priority to the original preferred shares, appears to have been decided in the affirmative in the unreported case of *Harper* v. *Paget*, *Re Argentine Tramways Co.*, M. R., 16 March, 1876, A. 599, cited in Palmer Comp. Prec. at pp. 197, 397.

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Amalgamation.

Amalgamation is the transfer of the assets and liabilities and business either of an existing company, or of several existing companies, to another existing company, or of two or more existing companies to a new company formed for the purpose of taking over such assets, liabilities, and business; the shareholders in the transferring company or companies having, in either case, the right to become shareholders in the company to which the assets, &c., are transferred: see *Dougan's Case*, L. R. 8 Ch. 540. The considerations which lead to the amalgamation of companies (which are of not unfrequent occurrence) are that the cost of management will be reduced by the substitution of a single board of directors and staff of officials for several boards and staffs; that a large company is likely to be able to afford, at a less cost in proportion to its receipts, to employ as directors and officers men of greater experience and capacity than a small company; and that a large company has generally less difficulty than a small one in placing its original capital, and issuing fresh shares, and in raising money on debentures; and also, in many cases, that it is found necessary to the profitable conduct of the business of the respective companies to put an end to the expense and loss caused by their competition: see Palmer, Comp. Prec. 572.

Reconstructions and amalgamations, how effected.

The reconstruction and amalgamation of companies may be effected by means of special Acts of Parliament. This course is, however, seldom adopted by companies registered under the Companies Acts, being somewhat dilatory and expensive, subject to stringent conditions as to procedure, and liable to be impeded in its progress by injunction of the Court, or by opposition in the Committees of the two Houses of Parliament (*s*). The reconstruction of a company may also be effected by means of an application to the Court under the Joint Stock Companies Arrangement Act, 1870

(*s*) As to procedure with regard to private bills, see Sir T. Erskine May's Parliamentary Practice, pp. 745 *et seq.*

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(33 & 34 Vict. c. 104), sect. 2. Such arrangements are not unfrequent, but their consideration is outside the purview of the present work (*t*).

Procedure under sect. 161 of the Companies Act, 1862.

The course which is most usually adopted, and which is, in ordinary cases, the most advisable for the reconstruction or amalgamation of companies, is to proceed by means of a voluntary winding-up, under sect. 161 of the Companies Act, 1862, which enacts as follows :—

Power for liquidators to accept shares, &c., as a consideration for sale of property of company.

"Where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale shares, policies, or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company ; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up ; subject to this proviso, that if any member of the company being wound up who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer ; that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner

(*t*) As to the powers of the Court under the Joint Stock Companies Arrangement Act, 1870, sect. 2, with regard to the reconstruction of companies, see Lindley on Partnership and Companies, 1302.

hereinafter mentioned, such purchase-money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution: no special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company, or for appointing liquidators; but if an order be made within a year for winding up the company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court."

As to the purchase of the interests of shareholders who dissent from a scheme for the reconstruction or amalgamation of a company under sect. 161, it is enacted that:—

Mode of determining price.

Sect. 162. "The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of 'The Companies Clauses Consolidation Act, 1845,' with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of such provisions this Act shall be deemed to be the special Act, and 'the company' shall mean the company that is being wound up, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, if only one, or any two or more of the liquidators if more than one."

Reconstruction under sect. 161.

Where the directors of a company are of opinion that its reconstruction is necessary or advisable, they have only to consult the interests and circumstances of their own company, and to obtain the assent of its shareholders to the proposed arrangement. Before proceeding further the directors should secure sufficient support of the shareholders, to ensure carrying through the arrangement to a successful issue, either by means of a resolution passed at a general meeting, or by sending out circulars explaining the nature of the scheme, and soliciting approval thereof. It may be prudent also at this stage of the proceedings to ascertain that the creditors of the old company are generally willing to forbear from calling in their debts: see *infra*. Having obtained the desired assu-

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rances, the directors should cause to be prepared an agreement between their company and the intended new company for the transfer of the assets and business of the former to the latter upon the terms of the proposed arrangement (*u*); and the memorandum and articles of association of the new company will also be prepared. This memorandum will specify, among the objects of the new company, the acquisition of the assets and business of the old company, and vary and extend the objects of the original memorandum as may be thought advisable; and the articles of the new company will authorize its directors to enter into and carry out on its behalf the proposed agreement, and will also contain such provisions as the altered character of the business may seem to require in addition to, or substitution for, the provisions of the original articles. The drafts of these instruments must then be submitted to an extraordinary general meeting of the old company, convened by notice, to consider the resolutions set out in the notice (*x*). These resolutions will, in effect, be for the sanction of the meeting being given to the proposed arrangement; for the voluntary winding up of the old company; for the appointment of liquidators for the purposes of the winding up (*y*); and for conferring on the liquidators authority to carry out the arrangement and execute the agree-

(*u*) A form of agreement on reconstruction of a company will be found in the following Precedents, *post*, Precedent XXXI., p. 594.

(*x*) The notices convening a meeting to consider resolutions with a view to the voluntary winding up of the company under the 161st section must expressly inform the shareholders that it is intended to proceed under that section: *Imperial Bank of China* v. *Bank of Hindustan*, L. R. 6 Eq. 91; *Ex parte Fox*, L. R. 6 Ch. at p. 193.

(*y*) The liquidators may be appointed by resolution after the resolution to wind up the company has been passed, and at the same meeting, the resolution appointing them being duly confirmed at the second meeting, so as to become a special resolution: *London and Australian Agency*, W. N. 1873, p. 198; *S. C.*, 22 W. R. 45; *Petersburg Gas Co.*, 33 L. T. 637; and it is not absolutely necessary that the notice convening the meeting should have stated that it is intended to propose a resolution for the appointment of liquidators: *Oakes* v. *Turquand*, L. R. 2 H. L. 325.

ment for the transfer of the assets, &c., of the old company to the new company on the formation of the latter. These resolutions, having been duly passed by a sufficient majority of the shareholders, must be confirmed at a second meeting, so as to become special resolutions: see *ante*, p. 351. The resolutions having been duly confirmed the new company will be forthwith incorporated, and the liquidators of the old company and the directors of the new company will execute the agreement for transfer on behalf of their respective companies. The new company will generally take the name of the old company: see *ante*, p. 335; and all or most of the directors of the old company will, in all probability, become the directors of the new company. The transfer of the property of the old company to the new company will be effected in due course, and the latter will proceed to issue its shares in accordance with the terms of the agreement. See Palmer, Comp. Prec. 553; Healey, Comp. Law and Pract. 360.

Dissentient shareholder.

A shareholder of the old company who dissents from the arrangement cannot be compelled to take shares in the new company; he may either within seven days give notice to the liquidators that he requires them to abstain from carrying the resolution for transfer into effect, or in the alternative to purchase his interest by arbitration under sect. 162: see *Union Bank of Kingston-upon-Hull*, 13 Ch. D. 808; or he may simply dissent and abandon all interest in the new company: *Higgs' Case*, 2 H. & M. 657; *Martin's Case*, Ibid. 669. As to the right of a dissentient shareholder to inspect the accounts, &c., of the old company before going into arbitration, see *Morgan's Case*, 28 Ch. D. 620.

The liquidators of the old company must pay and discharge all the debts and liabilities of the old company, except as regards such creditors as may be willing to accept the liability of the new company in substitution for that of the old company.

Winding up of old company on reconstruction.

The affairs of the old company having been fully wound up, the liquidators will make up an account of the conduct of the winding-up, and the disposal of the property, and submit the same to a final meeting

Of Joint Stock Companies.

of the old company, duly called by advertisement in the London Gazette one month before such meeting; and will make a return to the registrar of such meeting having been held; and on the expiration of three months from the date of the registration of the return, the old company will be deemed to be dissolved; see sects. 142 and 143 of the Act of 1862.

Amalgamation under sect. 161.

A similar course of procedure will be adopted where it is desired to effect an amalgamation, such procedure being, however, modified by the considerations that, in such cases, the interests of several companies have to be considered, and, so far as possible, reconciled; and that the assent of their respective shareholders must be obtained to the arrangement. Moreover, in the case of the transfer of the assets, &c., of one or more companies to another *existing* company, it will not generally be necessary to prepare a new memorandum and articles of association, unless indeed the objects stated in the memorandum of the transferee company do not include the acquisition of a business such as that of the transferring company or companies, in which case it will be necessary to reconstruct the transferee company for the purpose of enabling it to accept the transfer.

Of course the terms of arrangement on the reconstruction or amalgamation of companies will vary according to the circumstances of the particular cases.

APPENDIX

TO THE FOREGOING DISSERTATION.

THE following regulations for the management of companies limited by shares given in Table A of the First Schedule to the Companies Act, 1862, are here inserted for purposes of reference. As to the comparative advisability of excluding these regulations or adopting them with modifications, see *ante*, p. 346.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Shares.

(1.) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(2.) Every member shall, on payment of one shilling, or such less sum as the company in general meeting may prescribe, be entitled to a certificate, under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.

(3.) If such certificate is worn out or lost, it may be renewed, on payment of one shilling, or such less sum as the company in general meeting may prescribe.

Calls on Shares.

(4.) The directors may from time to time make such calls upon the members in respect of all monies unpaid on their shares as they think fit, provided that twenty-one days notice at least is given of each call, and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

(5.) A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

(6.) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(7.) The directors may, if they think fit, receive from any member willing to advance the same all or any part of

the monies due upon the shares held by him beyond the sums actually called for; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares.

(8.) The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

(9.) Shares in the company shall be transferred in the following form:—

I A. B. of in consideration of the sum of pounds paid to me by C. D. of do hereby transfer to the said C. D. the share [*or* shares] numbered standing in my name in the books of the Company, to hold unto the said C. D., his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I the said C. D. do hereby agree to take the said share [*or* shares] subject to the same conditions. As witness our hands, the day of

(10.) The company may decline to register any transfer of shares made by a member who is indebted to them.

(11.) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

(12.) The executors or administrators of a deceased member shall be the only persons recognized by the company as having any title to his share.

(13.) Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

(14.) Any person who has become entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

(15.) The person so becoming entitled shall testify such election

by executing to his nominee an instrument of transfer of such share.

(16.) The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

Forfeiture of Shares.

(17.) If any member fails to pay any call on the day appointed for payment thereof, the directors may at any time thereafter, during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such nonpayment.

(18.) The notice shall name a further day on or before which such call, and all interest and expenses that have accrued by reason of such nonpayment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable). The notice shall also state that in the event of nonpayment at or before the time and at the place appointed the shares in respect of which such call was made will be liable to be forfeited.

(19.) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest, and expenses due in respect thereof, has been made, be forfeited, by a resolution of the directors to that effect.

(20.) Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.

(21.) Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

(22.) A statutory declaration in writing, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such share, and such declaration and the receipt of the company for the price of such share, shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock.

(23.) The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.

(24.) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

(25.) The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase in Capital.

(26.) The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

(27.) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

(28.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the pay-

ment of calls, and the forfeiture of shares on nonpayment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

(29.) The first general meeting shall be held at such time, not being more than six months after the registration of the company, and at such place, as the directors may determine.

(30.) Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(31.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(32.) The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one fifth in number of the members of the company, convene an extraordinary general meeting.

(33.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

(34.) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meetings.

(35.) Seven days notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner herein-after mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(36.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance sheets, and the ordinary report of the directors.

(37.) No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows; that is to say, if the persons who have taken

shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.

(38.) If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved: In any other case it shall stand adjourned to the same day in the next week, at the same time and place; and if at such adjourned meeting a quorum is not present it shall be adjourned *sine die*.

(39.) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

(40.) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

(41.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(42.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(43.) If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In the case of an equality of votes at any general meeting the chairman shall be entitled to a second or casting vote.

Votes of Members.

(44.) Every member shall have one vote for every share up to ten: he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

(45.) If any member is a lunatic or idiot he may vote by his committee, curator bonis, or other legal curator.

(46.) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share

or shares, and no other, shall be entitled to vote in respect of the same.

(47.) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

(48.) Votes may be given either personally or by proxy.

(49.) The instrument appointing a proxy shall be in writing, under the hand of the appointor, or if such appointor is a corporation, under their common seal and shall be attested by one or more witness or witnesses: No person shall be appointed a proxy who is not a member of the company.

(50.) The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

(51.) Any instrument appointing a proxy shall be in the following form:—

Company Limited.

I of in the county of being a member of the Company Limited, and entitled to vote [*or* votes], hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of , and at any adjournment thereof [*or*, at any meeting of the company that may be held in the year].

As witness my hand, this day of .

Signed by the said in the presence of

Directors.

(52.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

(53.) Until directors are appointed the subscribers of the memorandum of association shall be deemed to be directors.

(54.) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

Powers of Directors.

(55.) The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the foregoing Act, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting: but no regulation made by the company in general meeting shall invalidate any prior Act of the directors which would have been valid if such regulation had not been made.

(56.) The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

(57.) The office of director shall be vacated,—

If he holds any other office or place of profit under the company:

If he becomes bankrupt or insolvent:

If he is concerned in or participates in the profits of any contract with the company:

But the above rules shall be subject to the following exceptions: that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director; nevertheless he shal not vote in respect of such contract or work; and i he does so vote, his vote shall not be counted.

Rotation of Directors.

(58.) At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

(59.) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot: in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

(60.) A retiring director shall be re-eligible.

(61.) The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(62.) If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

(63.) The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

(64.) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(65.) The company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead: the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

(66.) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business: questions arising at any meeting shall be decided by a majority of votes: in case of an equality of votes the chairman shall have a second or casting vote: a director may at any time summon a meeting of the directors.

(67.) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68.) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit: any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

(69.) A committee may elect a chairman of their meetings: if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members

present shall choose one of their number to be chairman of such meeting.

(70.) A committee may meet and adjourn as they think proper: questions arising at any meeting shall be determined by a majority of votes of the members present; and in case of an equality of votes the chairman shall have a second or casting vote.

(71.) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

(72.) The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

(73.) No dividend shall be payable except out of the profits arising from the business of the company.

(74.) The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

(75.) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

(76.) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the company.

(77.) No dividend shall bear interest as against the company.

Accounts.

(78.) The directors shall cause true accounts to be kept,—

Of the stock in trade of the company;

Of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place; and,

Of the credits and liabilities of the company:

The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that

may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.

(79.) Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

(80.) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters: every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(81.) A balance sheet shall be made out in every year, and laid before the company in general meeting, and such balance sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(82.) A printed copy of such balance sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

Audit.

(83.) Once at the least in every year the accounts of the company shall be examined, and the correctness of the balance sheet ascertained, by one or more auditor or auditors.

(84.) The first auditors shall be appointed by the directors: subsequent auditors shall be appointed by the company in general meeting.

(85.) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86.) The auditors may be members of the company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company; and no director or other officer of the company is eligible during his continuance in office.

(87.) The election of auditors shall be made by the company at their ordinary meeting in each year.

(88.) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

(89.) Any auditor shall be re-eligible on his quitting office.

(90.) If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91.) If no election of auditors is made in manner aforesaid, the Board of Trade may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

(92.) Every auditor shall be supplied with a copy of the balance sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

(93.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company : he may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the company.

(94.) The auditors shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance sheet containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory ; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

(95.) A notice may be served by the company upon any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

(96.) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members ; and notice so given shall be sufficient notice to all the holders of such share.

(97.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post ; and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post office.

Dr. BALANCE SHEET of the Co. made up to 18 . Cr.

CAPITAL AND LIABILITIES.			£ s. d.	£ s. d.	PROPERTY AND ASSETS.			£ s. d.	£ s. d.
I. Capital.		*Showing:*			III. Property held by the Company.		*Showing:*		
	1.	*The Number of Shares.*				7.	*Immovable Property, distinguishing—*		
	2.	*The Amount paid per Share*					*(a.) Freehold Land*		
	3.	*If any Arrears of Calls, the Nature of the Arrear, and the Names of the Defaulters.*					*(b.) ,, Buildings*		
							(c.) Leasehold ,,		
	4.	*The Particulars of any Forfeited Shares.*				8.	*Movable Property, distinguishing—*		
II. Debts and Liabilities of the Company.		*Showing:*					*(d.) Stock in Trade*		
	5.	*The Amount of Loans on Mortgages or Debenture Bonds.*					*(e.) Plant*		
	6.	*The Amount of Debts owing by the Company, distinguishing—*					*The Cost to be stated with Deductions for Deterioration in Value as charged to the Reserve Fund or Profit and Loss.*		
		(a.) Debts for which Acceptances have been given.			IV. Debts owing to the Company.		*Showing:*		
		(b.) Debts to Tradesmen for Supplies of Stock in Trade or other Articles.				9.	*Debts considered good for which the Company hold Bills or other Securities.*		
		(c.) Debts for Law Expenses.				10.	*Debts considered good for which the Company hold no Security.*		
		(d.) Debts for Interest on Debentures or other Loans.					*Debts considered doubtful and bad*		
		(e.) Unclaimed Dividends.				11.	*Any Debt due from a Director or other Officer of the Company to be separately stated.*		
		(f.) Debts not enumerated above.							
VI. Reserve Fund.		*Showing:*			V. Cash and Investments.		*Showing:*		
		The Amount set aside from Profits to meet Contingencies.				12.	*The Nature of Investment and Rate of Interest.*		
VII. Profit and Loss.		*Showing:*				13.	*The Amount of Cash, where lodged, and if bearing Interest.*		
		The disposable Balance for Payment of Dividend, &c.							
Contingent Liabilities.		*Claims against the Company not acknowledged as Debts.*							
		Monies for which the Company is contingently liable.							

PRECEDENTS.

I. *ARTICLES OF PARTNERSHIP between* Two Traders (*a concise form*).

Parties.

ARTICLES OF AGREEMENT (*a*), made the —— day of ——, Between [A. B.], of, &c., of the one part, and [C. D.], of, &c., of the other part, Whereby it is agreed that :—

Form and duration of partnership.

1. The parties shall become and be partners under the firm of "[B. & D.]" in the business of ——, for —— years from the —— day of ——, 18—, or until the expiration of —— months' notice in writing to determine the partnership (*b*), left by either partner for the other at their place of business, at any time after the —— day of ——, 18—.

Place of business.

2. The business shall be carried on in the messuage or shop No. ——, in —— Street, or such other place as the partners shall hereafter agree on.

Capital to be contributed.

3. The capital of the partnership shall be the sum of £——, to be contributed by the said [A. B.] and [C. D.] in equal shares.

Relative shares.

4. The profits and losses shall belong to and be borne by the said [A. B.] and [C. D.] in equal shares.

Monthly drafts.

5. The said [A. B.] may draw out of the profits, money not exceeding £—— in each month; and the said [C. D.] may draw out of the profits, money not exceeding £—— in each month.

Rent of house.

6. The said [A. B.], by whom the said messuage or shop and premises in which the business is carried on are held during the residue of a term of —— years from the —— day of ——, granted by a lease dated, &c., at a rent of £——,

Lease of partnership premises.

shall hold the premises in trust for the partnership; and shall be indemnified by the partnership from the said rent, and from the lessee's covenants and conditions of the lease; and shall be credited in the partnership books with the sum

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(*a*) Stamp, 6*d*.

(*b*) For form of notice to determine partnership, see *ante*, p. 112.

of £—— (being the agreed value of the lease), as part of his contribution to capital (*c*).

Expenses.

7. The said rent, and all taxes, rates, repairs, and outgoings, in respect of the said messuage and shop, or other partnership place of business for the time being, or of the business, shall be paid out of the profits, or in case of deficiency of profits, then by the partners equally.

Servants, &c.

8. No apprentice, clerk, or servant, shall be taken, employed, or dismissed, without the consent of both partners.

Apprentice fees, &c.

9. All premiums and fees taken with apprentices, or the like, shall be part of the profits.

Books of account.

10. The partners respectively shall cause all usual accounts and entries to be kept and made in proper books; And all securities and vouchers shall be kept at the place of business, or at the bankers of the partnership, and be open to the inspection of each partner.

Annual account.

11. Immediately after each —— day of —— in every year, the partners shall take an account and valuation of the effects, credits, and liabilities of the partnership, to be forthwith entered in two books, to be signed by the partners, each of whom is to retain one. The entries in such books shall be conclusive, except only as to such errors to the amount of £—— as shall be complained of within —— months from such signing. The profits shall be divided as aforesaid, after the making up of such account.

Restriction purchases.

12. No partner shall purchase goods to the amount of £—— without the previous consent of the other in writing.

Not to give credit.

13. Either partner dealing with, or giving credit of goods or money to, any person after request to the contrary by the other, shall immediately pay to the other the full value or amount of such goods or money as liquidated damages (*d*).

(*c*) For a different arrangement with regard to the business premises, see Precedent II., cl. 8, *post*, p. 381.

(*d*) A clause is sometimes inserted in articles of partnership providing that a penalty or a specified sum by way of liquidated damages shall be payable on breach of any of the stipulations of the articles. But such clauses are of little, if any, use. The Court will relieve against such a penalty, and restrict the operation of the clause imposing it, so as to secure only the damage actually proved to have been incurred; and a *general* proviso that a specified sum shall be payable "as liquidated damages" on breach of any of a series of stipulations is nugatory and the proviso will be construed to be for payment of a penalty: see *Kemble*

I. Articles of Partnership between Two Traders (Concise Form).

Not to release debts, or incur liabilities.

14. Neither partner shall, without the consent of the other, compound or discharge any liability to the partnership, or otherwise discharge or diminish any security to the partnership, or engage the partnership name on any negotiable or other security, or for any debt, otherwise than in the usual course of business, or make himself liable as bail or surety for any person or on any accommodation bill or note or policy of insurance, or enter into any wagering contract, or assign his share or interest in the partnership, or withdraw his share in the capital, or expose the partnership effects to the danger of being taken in execution, or be concerned out of the partnership in the business of ——.

Power of expulsion.

15. If either partner shall infringe any of the clauses numbered 8, 10, 11, 12, 13, and 14 respectively, or become insane, or enter into any arrangement or composition for the benefit of his creditors, or shall (without the consent of the other partner) make any assignment, either absolutely or by way of mortgage, or declaration of trust of his share and interest in the partnership, or any part thereof, the other partner may forthwith determine the partnership by notice in writing, left at the place of business, and may thenceforth continue the business alone, and may advertise notice of the dissolution in the *London Gazette*, and if necessary, sign the name of the infringing partner to such notice of dissolution (*e*).

Proviso for purchase of deceased or retiring partner's share.

16. On the death or bankruptcy of either partner (*f*), or on notice being given to either partner under clause ~~14~~ 15, or by either partner under clause 1, his share in the effects may be purchased by the other at a valuation to be made by arbitrators or their umpire, as hereinafter mentioned; The price shall be paid by three equal instalments at the respective periods of six, twelve, and eighteen calendar months from

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v. *Farren*, 6 Bing. 141; *Thompson* v. *Hudson*, L. R. 4 H. L. at p. 30. But a clause providing that a specified or ascertainable sum shall be paid for the breach of a particular stipulation is enforceable: see *Atkins* v. *Kinnear*, 4 Ex. 776; *Reynolds* v. *Bridge*, 6 E. & B. 528. See further as to agreements to pay penalties and liquidated damages, *ante*, tit. Bond, Vol. II., pp. 298 *et seq.*

(*e*) As to the jurisdiction of the Court to order the advertisement of a dissolution, where the partnership is dissolved by consent, see *Hendry* v. *Turner*, 31 Ch. D. 355.

(*f*) As to dissolution of a partnership by the death or bankruptcy of a partner, see *ante*, p. 284. And see as to this proviso, *post*, p. 385, note (*g*).

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such death: The payment of such instalments, with interest at the rate of £4 per centum per annum (*g*), for so much of the said price as shall for the time being remain unpaid at the date of payment of each such instalment (*h*), and also the indemnity of the retiring partner, or of the executors or administrators of the deceased partner, shall be secured by the purchaser's bond; And if the said [B.] shall be the purchaser, he may, at his option, cause the lease of the said messuage at —— to be included in such valuation and purchase; And, on such purchase, the share of the retiring or deceased partner in the profits, up to the day of dissolution, shall be ascertained and paid by the other forthwith.

Proviso for winding up business on determination of partnership.

17. Upon the determination of the partnership by effluxion of time, or upon its determination by any means, if the option given by the last preceding clause shall not have arisen or been exercised, then, as soon as conveniently may be, a full and general account and valuation shall be taken of the property, assets, and liabilities of the partnership, and the property and assets shall be sold and realized, and the debts due to the partnership shall be collected and got in, and the monies arising thereby shall be applied in the first place in discharge of the liabilities of the partnership, and the expenses of and incident to the taking of the said account and valuation, and of and incident to such sale, realization, and getting in as aforesaid, and in the next place in payment to each partner, or his representatives, of any unpaid profits due to him or them, and repayment of his or their share of capital, and the residue (if any) shall be divided between the partners, or their representatives, in equal shares; and the partners, or their representatives, shall execute and do all such instruments and things for carrying out the realization and division of the partnership assets, and particularly will execute such mutual indemnities and releases as may be reasonable and proper: PROVIDED ALWAYS, that if the proceeds of the realization shall not be sufficient, after the discharge of the liabilities of the partnership, and of such

(*g*) In the absence of express stipulation interest is not generally payable on the share of a partner after dissolution: *Barfield* v. *Loughborough*, L. R. 8 Ch. 1.

(*h*) It should appear clearly that interest is to be payable on the unpaid balance, and not only on the amount of each instalment: see *Orr Ewing* v. *Orr Ewing*, 8 App. Ca. 822.

I. Articles of Partnership between Two Traders (Concise Form).

expenses as aforesaid, and the payment of any such unpaid profits as aforesaid, to repay to the partners, or their representatives, their respective shares of capital in full, then such shares shall be repaid rateably so far as such proceeds shall extend, and neither partner nor his representatives shall have any claim on the other partner, or his representatives, in respect of the deficiency.

Arbitration clause (*i*).

18. If at any time any dispute, doubt, or question shall arise between the said partners, or their respective executors or administrators, either on the construction of these presents, or respecting the accounts, transactions, profits, or losses of the business, or otherwise in relation to the partnership, then every such dispute, doubt, or question shall be referred to two arbitrators, or their umpire, to be appointed in the usual way, and such reference shall in all respects, as to the mode and consequences thereof, conform to the provisions in that behalf contained in the "Common Law Procedure Act, 1854," or any statutory modification thereof for the time being subsisting; and so that this submission and the award may be made a rule or order of any division of Her Majesty's High Court of Justice, on the application of either party to the reference.

In witness, &c.

II. *ARTICLES OF PARTNERSHIP between* Three Traders, *with* Ordinary Clauses.

THIS INDENTURE (*k*), made the —— day of ——, 18—,

Parties.

Between [A. B.], of, &c., of the first part; [C. D.], of, &c., of the second part; and [E. F.], of, &c., of the third part:

Testatum.

WITNESSETH, that each of them the said [A. B.], [C. D.], and [E. F.] (so far as the covenants, stipulations, and provi-

Mutual covenants.

(*i*) This form of arbitration clause is that generally used in partnership articles, and appears sufficient in all ordinary cases. For forms of clauses providing for special modes of reference to arbitration, *e.g.*, to three arbitrators, or a single arbitrator, see *ante*, tit. Arbitration, Vol. II., pp. 200 *et seq.*; see also Index to Precedents at the end of this Volume.

(*k*) Stamp, 10*s*.

sions hereinafter contained are to be observed and performed by him, his executors or administrators), hereby covenants with the others of them jointly and severally in manner following, that is to say:—

II. Articles of Partnership between Three Traders (Common Form).

Business and duration of partnership.

1. The said [A. B.], [C. D.], and [E. F.], and the survivors of them, shall become and henceforth continue partners in the trade or business of ——, for the term of seven years from the day of the date of these presents, if the said partners or any two of them shall so long live, subject to the provisions hereinafter contained for determining the said partnership.

Style of firm, and place of business.

2. The said business shall be carried on under the style or firm of "[B.] and [Co.]," in the messuage belonging to the said [A. B.], in —— Street, in the city of ——, or in such other place of business as the said partners shall from time to time agree upon.

Power to determine partnership by notice.

3. If on or at any time after the —— day of ——, 18—, any partner shall be desirous of retiring from the partnership, he shall be at liberty to give to the other partners or partner, or to leave for them or him at the place where the business shall for the time being be carried on, notice in writing of such his desire and of his intention to determine the partnership so far as he is concerned (*l*); and the partnership shall, at the expiration of six months after the giving or leaving of such notice, determine accordingly, as regards the partner giving such notice, subject nevertheless to the provisions contained in clause 25 of these presents.

Power of expulsion.

4. If any of the said partners shall at any time become insane, or become insolvent (*m*), or make or enter into any arrangement or composition with his creditors whether statutory or otherwise, or shall knowingly do, permit, or omit any act or thing contrary to any of the covenants, stipulations, and provisions herein contained, or if he shall (except with the consent of the other partners or partner, or by reason of sickness or physical injury), absent himself from business for more than —— days at any one time, or more than —— days in any

(*l*) For form of notice determining partnership, see *ante*, p. 112.

(*m*) Bankruptcy *ipso facto* determines a partnership, *ante*, p. 284. Insolvency in a clause of this nature includes inability to meet current liabilities, even though the person might be able to discharge his liabilities in full if his assets were all got in and realised: see *Bayley* v. *Schofield*, 1 M. & S. 338; *Biddlecombe* v. *Bond*, 4 A. & E. 332.

II. Articles of Partnership between Three Traders (Common Form).

one year: Then, and in any of the said cases, the other partners or partner, if they or he shall think fit, shall be at liberty to give to the insane partner, or his committee, or to the partner who shall offend in any of the particulars aforesaid (as the case may require), or leave at the place where the business shall for the time being be carried on, a notice in writing desiring him to retire from the partnership, and declaring the partnership to be dissolved and determined: And the partnership shall, from the time of giving or leaving such notice, or from any other time to be therein specified for the purpose, determine accordingly as regards the partner to or for whom such notice shall be given or left, subject nevertheless to the provisions contained in clause 25 of these presents, and also subject and without prejudice to the remedies of the respective partners for the breach or non-observance or non-performance of all or any of the covenants, stipulations, and provisions herein contained.

Advertisement of dissolution.

5. If the partnership shall be determined by notice under either of the preceding articles, the partner giving such notice shall be at liberty to cause a proper notice of the dissolution of the said partnership to be advertised in the *London Gazette*, and may, if necessary, sign the name of the partner to whom the said notice shall have been given to such advertisement or notice of dissolution.

Capital.

6. The capital of the partnership shall be the sum of £——, to be contributed by the said partners in the following proportions, namely, the sum of £——, being two-fourths thereof, by the said [A. B.]; the sum of £——, being one other fourth thereof, by the said [C. D.]; and the sum of £——, being the remaining fourth thereof, by the said [E. F]:

Interest on capital.

And they shall respectively be considered as creditors of the partnership in respect of such capital, and shall be allowed interest for the same, after the rate of £5 per centum per annum (*l*).

(*l*) Usually, a definite sum is advanced by the partners at the time of entering into partnership. It also frequently happens, that the stock in trade, &c., requisite for carrying on the trade, is purchased of one of the partners. In such case, for the last part of clause in the text, substitute the following:—

"Out of which sum of £—— the sum of £—— shall be forthwith paid to [A.], as and for the price or purchase-money of the stock in trade and fixtures heretofore used by him in

II. Articles of Partnership between Three Traders (Common Form).

7. The said partners shall be entitled to the net profits of the said business in the proportions following, namely, the said [A. B.] to two-fourth parts; the said [C. D.] to one other fourth part; and the said [E. F.] to the remaining one-fourth part thereof: And all losses happening in the course of the said business shall be borne by the said partners in the same proportions, unless the same shall be occasioned by the wilful breach of any covenant, stipulation, or provision herein contained, or other neglect or default on the part of either of the said partners, in which case the same shall be made good by the partner through whose breach, neglect, or default the same shall arise.

Respective proportions of profits.

8. The said [A. B.] shall be allowed by the partnership the clear yearly sum of £——, by way of rent for the said messuage in —— Street aforesaid, so long as the said business shall be carried on therein; but that the said messuage shall continue the sole property of the said [A. B.], subject only to be used for the purposes of the partnership business (*m*).

Payment to one partner for rent.

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his said trade or business of a ——, carried on in the said messuage, in —— Street aforesaid, and which stock in trade and fixtures have been purchased by the partnership at the price aforesaid; and the partners shall be entitled to and interested in the said capital, stock in trade, and fixtures, in the proportions aforesaid."

Sometimes the capital is to be advanced within a definite time, thus:—

"And the said sums so to be advanced by the partners respectively shall be paid by them to the bankers of the partnership, to the credit of the partnership, on or before the —— day of ——."

(*m*) Add, if so intended,

"And the said [A. B.] shall be at liberty, if he shall think proper, to use and occupy all such part of the said messuage as is not used in, or wanted for the purposes of, the partnership business, for the residence of himself and his family, without paying any rent or taxes for the same."

That one of the partners may occupy part of the house in which the business is carried on.

Or, if so intended,

"at the yearly rent of £——, to be paid or allowed by him to the partnership, in equal half-yearly portions, or proportionally for any less period, during the time of such occupa-

II. Articles of Partnership between Three Traders (Common Form).

Expenses of partnership to be paid out of the profits.

9. As well the said rent as all taxes, rates, assessments, and other outgoings which shall become payable in respect of the messuage wherein the said business shall be carried on, the costs of insuring the same and the stock in trade and fixtures belonging to the partnership from loss or damage by fire (*n*), the expense of providing coals and candles, and of paying the salaries and wages of clerks, porters, and servants to be employed in the said business, and of travelling, and all other disbursements and expenses which may be incurred by the partners respectively in the course of the said business, shall be paid out of the profits of the business, or in case of a deficiency of profits, then by the said partners in the proportions in which they shall be respectively entitled to the net profits of the business.

As to bankers, and drawing cheques.

10. The bankers of the partnership shall be the —— Banking Company, or such other bankers as the partners shall from time to time agree upon; and all partnership monies (not required for current expenses) shall be paid into the account of the firm at the said bank at the end of every week. Each partner shall be at liberty to draw on the partnership account, but only for the purposes of the partnership, or for the purposes mentioned in the next clause hereof, and only by drafts or cheques upon such bankers in the firm name.

Sums to be drawn out monthly.

11. The partners shall be at liberty, from time to time, to draw out of the said business, for their own use respectively, any sum or sums not exceeding the sums following, that is to say: the said [A. B.] the sum of £—— per month; the said [C. D.] the sum of £—— per month; and the said [E. F.] the sum of £—— per month; such sums to be duly accounted for by them respectively on the taking of every such general

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tion; but the said [A. B.] shall not be required to pay any proportion of the taxes in respect of his said occupation, and shall be at liberty to quit and leave the said premises, if he shall think proper, without any previous notice."

See also another arrangement as to the business premises, *ante*, p. 375.

(*n*) If the house is to be kept in repair at the expense of the partnership, add—

Repairs of house.

"And of keeping the said messuage and premises of [A. B.] so long as they shall be used in the partnership business, in good and substantial repair."

annual account as hereinafter directed; and any partner whose drawings shall, on the taking of such account, be found to exceed his share of the net profits and interest on capital accrued to him for the previous year, shall forthwith refund the difference.

No apprentice, &c., to be taken by one partner without the consent of the other.

12. No apprentice, clerk, or servant, shall be taken or engaged, or be employed in or about, or dismissed from, the said business, by any of the partners without the consent of the others of them.

Apprentice-fees to be divided as profits.

13. All premiums and apprentice-fees, to be paid with any apprentice or other person to be received into the said business, shall be considered as part of the profits of the said business, and be divided accordingly.

To be faithful to each other, &c.

14. The partners shall be true and just to each other in all their transactions and dealings; and shall, at all times during the continuance of the partnership, diligently and faithfully employ themselves in the conduct and management of the said business, and the concerns of the partnership.

To give information.

15. Every partner shall forthwith inform the other partners of all letters, accounts, writings, proposals, matters and things, which shall have come into his hands or knowledge touching the partnership business.

Not to engage in other business.

16. None of the partners shall, during the continuance of the partnership, without the consent of the other of them, either separately or in partnership with any other person, engage in or carry on, or be concerned or interested, directly or indirectly, in the trade or business of ——, nor engage in or carry on any other trade or business, nor become nor be a director of any joint-stock company.

Neither partner to give credit, &c., after notice from the other not to do so.

17. None of the partners shall transact any business, or enter into any contract or agreement with, or give credit to, or lend or advance any money out of the partnership funds to any person, company, or corporation, after he shall be requested by the other partners not to do the same.

Nor, without consent of the other, compound debts, &c.

18. None of the partners, without the consent of the others of them, shall compound, release, or discharge any debt or duty which shall be due or owing to the partnership, without receiving the full amount thereof; nor sign any instrument whereby any debt or security shall be in anywise discharged, vacated, or diminished.

Nor draw, &c., any bill,

19. None of the said partners, without the consent of the others of them, shall draw, accept, or sign any bill of ex-

II. Articles of Partnership between Three Traders (Common Form).

change or promissory note, or contract any debt on account of the said partnership, or employ any of the monies or effects of the partnership, or in any way pledge the credit thereof except in the usual and regular course of business.

except in the regular course of business.

20. None of the said partners shall, without the previous consent in writing of the others of them, become bail, surety, or security for any person or persons (*o*), [or draw, indorse, or accept any accommodation bill or note, or underwrite any policy of insurance, or make or enter into any time-bargain for the sale or purchase of stock in any government security, or expose himself to any other risk or hazard in any gaming transaction] (*p*).

Nor become bail or surety, &c.

Nor assign his share.

21. None of the partners shall, without the previous consent in writing of the others of them, make any assignment, either absolutely or by way of mortgage, or any declaration of trust of his share or interest in the said partnership or any part thereof, or withdraw his share of the capital therein or any part thereof.

Nor permit effects to be taken in execution.

22. None of the partners shall knowingly do or permit anything whereby the moneys or effects of the partnership shall be seized, attached, extended, or taken in execution.

To keep proper accounts, &c., which are to be open to the inspection both partners.

23. The partners respectively shall keep, or cause to be kept, proper books of account, wherein shall be entered all monies received and paid, and all contracts entered into, and all business transacted on account of the partnership, and all other matters and things of which accounts ought to be kept, according to the usual and regular course of the said business, and which books of account together with all deeds, securities for money, letters, and papers belonging to the partnership (except such as shall be kept with the bankers of the partnership), shall be kept at the place where the said business shall be carried on, and shall, at all reasonable times, be open to the inspection of all the partners.

(*o*) This prohibition is often found useful in affording partners a reason for refusing to become bail or surety.

(*p*) The clause within brackets is less frequently used than the stipulation not to become bail or surety. The principle of the objection, however, applicable to all such transactions, is the same; being, not that the offending partner directly brings any responsibility upon the firm by the acts in question, but that he exposes himself to risks, which might lead to a dissolution of the partnership, or be otherwise detrimental to its interests.

II. Articles of Partnership between Three Traders (Common Form).

General account to be annually taken.

24. As soon as conveniently may be after the —— day of ——, in every year during the partnership, a general account in writing shall be made and taken by the partners of all the monies, credits, property, and effects, and of the debts and liabilities of the partnership; and of all contracts entered into, and all business transacted on account of the partnership during the then preceding year, and of all other matters and things usually included in such accounts, among persons engaged in the trade or business of ——; and such account shall be entered in three books, to be respectively signed by the partners; and after such signature, each of the partners shall take one of the said books, and they shall be bound thereby, unless some manifest error shall appear therein within the space of —— calendar months next after the making up of such account, and be notified by any of the partners to the others of them within that time; and in such case only such error shall be rectified: And on the making up of every such yearly account, all interest which shall become due to the said [A. B.], [C. D.], or [E. F.], for such sum or sums of money as they shall respectively advance and bring into the said partnership, and the yearly allowance of £—— to the said [A. B.] for rent, shall, in the first place, be deducted, and the residue of the clear profits of the said business, which shall have accrued or been gained in the preceding year, shall be divided amongst the partners in the proportions aforesaid.

Proviso for purchase of deceased, bankrupt, or retiring partner's share (*q*).

25. In case of the death or bankruptcy of any of the said partners before the expiration of the partnership term, or if any notice of retirement shall be given by any partner under clause 2, or to any partner under clause 3, then the surviving

(*q*) In preparing clauses for enabling some partners to become the purchasers of the shares of others, and, indeed, in every case where a party is empowered to do a particular act, it should be clearly shown whether it is intended to be optional or compulsory. An attention to this particular would prevent much ground for dispute.

It is very doubtful whether this provision would be of any effect as against the trustee of a bankrupt partner, so as to preclude such trustee from insisting on the total dissolution of the partnership and winding up of its affairs: see *Wilson* v. *Greenwood*, 1 Swanst. 471, and the note at p. 481 of that report; see also *Whitmore* v. *Mason*, 2 J. & H. 204; *Ex parte Warden*, 21 W. R. 51. But the trustee may sell the bankrupt's share to his co-partners by private contract at a fair valuation: *Re Motion*, L. R. 9 Ch. 192.

II. Articles of Partnership between Three Traders (Common Form).

or other partners or partner (if only one such partner) may, if they or he shall think fit, elect to continue the partnership business, and in that case such surviving or continuing partners or partner shall, within the space of six calendar months next after such death, bankruptcy, or retirement as aforesaid, settle and adjust with the representative or representatives of the deceased partner, or with the trustee of the bankrupt partner, or with the retiring partner or his committee, as the case may require, all accounts, matters, and things relating to the partnership; and for the purpose of such settlement and adjustment, the value of the share of the deceased, or bankrupt, or retiring partner of and in the property and assets, including the goodwill of the partnership, shall be ascertained by two indifferent persons, one to be chosen by the surviving or continuing partner or partners, and the other by the representatives or representative of the deceased partner, or the trustee of the bankrupt partner, or the retiring partner or his committee, as the case may require, or, in the case of difference between such valuers, then by their umpire, to be chosen in the usual manner; and the surviving or continuing partners or partner shall thereupon purchase the said share at such valuation, and shall enter into a bond in a sufficient penalty for securing the amount of such valuation to the person or persons entitled thereto, by three equal instalments, at the respective periods of six, twelve, and eighteen calendar months next after the date of such death, bankruptcy, or retirement as aforesaid, with interest as from that date at the rate of £—— per cent. per annum for so much of the said amount as shall for the time being remain unpaid at the date of payment of each instalment: And also a bond for indemnifying the estate and effects of the deceased, or bankrupt, or retiring partner against the debts and liabilities of the partnership, on having a proper assignment or assurance executed for vesting in the surviving or continuing partners or partner the share of the deceased, or bankrupt, or retiring partner, and enabling such surviving or continuing partners or partner to collect and get in all the assets of and debts due to the partnership (*r*).

(*r*) An assignment or power of attorney is not requisite, in order to enable the surviving partner to receive the debts, since the partnership is considered as subsisting even after a dissolution,

26. For the purposes of valuation, the goodwill of the partnership shall be deemed to be equal to three years' purchase of the average net yearly profits of the said business for the last preceding —— years, or for the period which shall have elapsed from the commencement of the partnership if less than —— years.

Valuation of goodwill.

27. In case the said [A. B.] shall die before the expiration of the partnership term, then the surviving partners or partner (if only one) shall have the option of purchasing from his representative or representatives the messuage in —— Street, ——, aforesaid, where the business is now carried on, at the price of £——, provided that the surviving partners or partner signify in writing their or his intention of purchasing the said messuage to the representative or representatives of the said [A. B.] within three calendar months after his death; and in such case the surviving partners or partner shall be entitled to an assignment (to be prepared at their or his expense) of the lease of the same premises for the residue which shall then be unexpired of the said term, subject to the rent and to the lessee's covenants reserved by and contained in the said lease.

In case of A. B.'s death, surviving partners to have option of purchasing lease of business premises.

28. No retiring partner shall, during the unexpired residue of the partnership term, commence, or carry on, or engage or be interested, directly or indirectly, in the trade or business of ——, at —— aforesaid, or within a distance of —— miles therefrom (*s*).

Retiring partner not to compete with firm.

29. [*Proviso for winding up the business on the termination of the partnership, vide ante*, p. ~~337~~, *mutatis mutandis* (*t*).]

Proviso for winding up.

30. In all matters relating to the management and conduct of the partnership business, notwithstanding anything herein contained to the contrary, the decision of a majority [in value (*u*)] of the partners shall be conclusive and bind all the partners.

Decision of majority to bind partners.

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until the affairs are wound up (*vide ante*, p. 284). It is usual, however, to execute such an instrument, in which the assignor covenants not to interfere in the receipt or recovery of the assets.

(*s*) As to covenants in restraint of trade, see *ante*, tit. BOND, Vol. II., p. 328, *et seq.*

(*t*) The division of the ultimate surplus will be "in the proportions in which the capital is hereinbefore expressed to be contributed by the partners" instead of "in equal shares."

(*u*) If the words in brackets are omitted any two of the partners may overrule the third, as regards any matter relating to the

II. Articles of Partnership between Three Traders (Common Form).

31. Subject to the provision contained in the last preceding clause, if at any time any dispute, &c. [*continue ut ante*, p. 378].

In witness, &c.

III. *ARTICLES OF PARTNERSHIP between* Two Tin-smelters; Expulsion Clause; Special Provisions *as to the* Admission *of* Sons *and as to* Paying out *and* Securing *the* Capital *of a* Retiring *or* Deceased Partner (*x*).

THIS INDENTURE (*y*), made the —— day of ——, 18—,

Parties. Between [A. B.], of, &c., of the one part, and [C. D.], of, &c., of the other part: Whereas the said [A. B.] became entitled, on the recent death of his brother, [E. B.], to certain blowing-houses, smelting-furnaces, offices, and premises, situate at ——, in the parish of ——, and county of ——, and to the utensils, plant, stock-in-trade, and credits belonging to the business of a tin-smelter and merchant, which was carried on by the said [E. B.] at the time of his death at the said blowing-houses, smelting-furnaces, offices, and premises hereinafter referred to as the said business premises: And whereas the said [A. B.], being desirous of continuing the said business, lately agreed with the said [C. D.] to take him into partnership for that purpose from the —— day of —— last, upon the terms and conditions, and with, under, and subject to the provisions

Testatum. hereinafter expressed: NOW THIS INDENTURE WIT-

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management or conduct of the business. The effect of inserting the words, in the present case, will be that A. B. having a share in the partnership equal to the aggregate shares of C. D. and E. F., cannot be overruled by them in such a matter, and unless an arrangement can be arrived at, the matter will have to go to arbitration.

(*x*) Although the deed from which the above Precedent is taken was drawn as recited with a view to a partnership between tin-smelters, most of its provisions will be found well adapted to the use of a partnership in any other trade or business.

(*y*) Stamp, 10*s*.

III. Articles of Partnership between Two Tin-Smelters.

NESSETH, that in consideration of the mutual trust and confidence which they the said [A. B.] and [C. D.] have in each other, each of them the said [A. B.] and [C. D.], so far as the covenants and agreements hereinafter contained are to be observed and performed by him, his executors or administrators, doth hereby covenant with the other of them in manner following, that is to say :—

Agreement for partnership.

1. The said [A. B.] and [C. D.] shall and will, subject to the provisions hereinafter contained, become and continue partners in the said business of tin-smelters and merchants, as from the —— day of —— last, and subject as aforesaid, such business as aforesaid shall continue to be carried on during their lives and the lives or life of any sons or son o either of them who shall be admitted into the partnership under the provisions in that behalf hereinafter contained.

Commencement and duration of partnership.

2. The style and firm of the partnership shall be "[B.] & Co."

Style o the firm.

3. The business of the partnership shall, during the partnership, be carried on at the said business premises of which it is agreed the firm for the time being shall, during the partnership, be deemed tenants of the said [A .B.], at a clear yearly rent of £——, the firm keeping the premises insured against fire to the amount of £——, and in good repair and condition.

Business to be carried on at ——— and firm to be deemed tenants of A. B., the owner.

4. The capital of the partnership shall consist of £—— sterling, and be provided by the said [A. B.] and [C. D.] in equal shares ; and the stock and credits of the business as it stood on the —— day of —— last, other than and except the said business premises to be so rented by the said firm as aforesaid, but including the utensils, engines, and plant, fixed and unfixed, used for the purposes of the said business, shall, for the purposes of the partnership, be taken to be of the value of £——, and shall be purchased by the firm at that sum ; and any excess of capital which the partners or either of them may at any time have in the business shall be considered a loan to the firm, but no partner having any such excess of capital in the business shall be entitled or bound to withdraw the same without —— calendar months' notice, and all the capital of the business, whether the prescribed capital or such excess as aforesaid, shall bear interest payable —— yearly at the rate of £—— per cent. per annum.

As to capital to be brought in by partne s.

Engines and plant to be deemed of the value of £——.

Excess of capital to be deemed a loan to the firm.

5. The capital or joint-stock, and the gains and profit

Capital, stock

III. Articles of Partnership between Two Tin-Smelters.

arising from the same, shall, subject as hereinafter is mentioned, be used and employed in the business of the said partnership.

and effects to be employed in the partnership business.

6. Each of the said [A. B.] and [C. D.] shall be entitled to one-half of the net profits of the business, and they shall bear any losses in equal shares.

Partners to share profits and losses equally.

7. Neither partner shall, by bill or otherwise, pledge the credit or use the money or property of the firm except for the purposes and in the ordinary course of the partnership business, and if either partner shall pledge the credit of the firm contrary to the above stipulation, he shall be considered to have done so on his own separate account, and shall indemnify his partner and the partnership property against the liability thereby incurred.

Neither partner to pledge the credit of the firm except for the purposes of the partnership business.

8. All payments shall be made by cheques drawn upon the bankers of the firm, and all bills and cheques shall be signed with the name of the firm, but may be made or drawn by either partner for the purpose of the business thereof, and the bankers of the firm, until otherwise agreed upon, shall be Messrs. ——.

All payments to be by cheque signed with the name of the firm and drawn upon the bankers thereof.

9. The business of the partnership shall be managed and conducted by the said [C. D.], who shall diligently and faithfully employ himself in and about the same for the greatest benefit and advantage of the firm, but the said [A. B.], although he shall have full liberty to assist in managing and conducting the said business, shall not be bound to concern himself therein further than he shall think proper.

C. D. to be a managing partner, with liberty for A. B. to assist if he shall think fit.

10. The partners shall meet once a month at the business premises, and shall at all times, but particularly at such monthly meetings, inform one another of all letters, accounts, matters and things relating to or concerning the said business.

Partners to meet once a month to investigate business, &c.

11. Neither partner shall, without the consent of the other, be engaged or concerned, either directly or indirectly, in any trade, manufacture, or business which would in anywise interfere with or affect the said partnership business (*y*), save only and except any trade or business in which either

Neither partner to engage in any other business without consent.

(*y*) Or,

"Whatsoever other than the business of the said partnership and for the benefit thereof."

If any other such business should lead to bankruptcy it would involve the winding-up and sale of the partnership business.

III. Articles of Partnership between Two Tin-Smelters.

party is at the date of these presents actually engaged or concerned.

Either partner to hire or dismiss servants without consent of the other, except in case of special request to the contrary.

12. Either partner [*or*, the said [C. D.]] shall be at liberty to hire or dismiss any clerk, traveller, workman, or servant, without the consent of the other [*or* of the said [A. B.], or of any future partners or partner to be admitted as hereinafter provided], except in cases where at any time a request to the contrary shall be made by the other partner [*or* by the said [A. B.], or such other partners or partner as aforesaid], in which excepted cases the consent of both the partners [*or* of all the partners for the time being] shall be necessary, and no apprentice shall be taken except with the consent and for the benefit of both the partners [*or* all the partners for the time being].

Neither partner to trust any forbidden person.

13. Neither partner shall deliver upon credit any of the goods belonging to the said partnership to any person or persons whom the other of them shall previously, by notice in writing, have forbidden him to trust, nor release or compound the debt of any debtor of the said partnership, or concur in or be privy to the obtaining of a certificate by any bankrupt who may be indebted to the said partnership; And in case of any breach of this stipulation, the partner committing the same shall, out of his separate estate, make good to the firm in ready money the value of the goods and debts so delivered on credit or released as aforesaid.

Neither partner to become surety, &c., without consent of the other.

14. Neither partner shall, without the consent in writing of the other of them, enter into any bond, or become bail, surety, or security with or for any person or persons whomsoever, or subscribe any policy of insurance as an insurer, except in the capacity of a director of a company, or speculate or make time bargains in the public funds or in any public loan, lottery, company, or undertaking.

[C. D.] to be at liberty to charge the firm for travelling expenses.

15. The said [C. D.] shall be at liberty to charge the firm with any sum or sums not exceeding in any one year £——, for or towards defraying his personal travelling and other expenses whilst absent at any time on account of or in relation to the business of the said partnership.

Proper books of account to be kept.

16. Proper books of account shall be kept, in which shall be entered all transactions, matters and things usually entered in books of account kept by persons engaged in the business of tin-smelters and merchants, and such books of account, together with all bonds, notes, bills, specialties,

III. Articles of Partnership between Two Tin-Smelters.

assurances, securities, letters and other writings which shall from time to time concern or belong to the partnership, shall remain and be kept at the principal counting-house or office where the business of the partnership shall for the time being be carried on, as the partners shall determine; And each partner shall at all times have free access to inspect and make extracts from such books.

General account and valuation account to be written in two books.

17. On the —— day of ——, 18—, and on the same day in every succeeding year, a full and general account in writing shall be made and taken of all purchases and sales which shall have been made during the preceding year, and of the stocks, credits, and liabilities of the firm, and a just valuation shall be made of all the particulars included in such account which shall be capable of valuation, and such general account or rest and valuation shall from time to time be written into two books, and be signed in each such book by each partner within —— calendar months after the time appointed for the taking thereof respectively, and they shall be bound thereby, save and except that if any manifest error shall be found in any such account or valuation within —— calendar months after the same shall have been so signed by both partners, and shall immediately be signified by either partner to the other, such error shall be rectified.

£—— per cent. to be deducted from the profits of every year for a depreciation fund.

18. In every year before the annual division of profits, £—— per cent. on the amount of the net profit of the preceding year shall be deducted therefrom, and be added to the capital to form a depreciation fund, to meet the cost of making good the engines, utensils, and plant employed in the business, when and as the same require repairs or renewals, and other extraordinary expenses.

Partner to be entitled to draw out £—— per cent. on his capital for his private use.

19. Every partner for the time being shall be entitled to draw out, for his own private use, the interest of his capital half-yearly, and also a sum quarterly on account of his prospective share of profits for the current year for the time being, as shall be equal to £—— per cent. on his prescribed amount of capital, but nevertheless the same, if not drawn out, shall not be deemed to have been capitalized so as to carry interest; and moreover if it shall appear, upon making up the general annual account, that the share of the net profits (if any) of the preceding year to which any partner so drawing out on account of his prospective share of profits as aforesaid shall have become entitled, has not amounted to

III. Articles of Partnership between Two Tin-Smelters.

the sum which shall have been drawn out by him, such partner shall immediately repay to the firm the difference between the amount of the sums which he shall have so drawn out and the sum (if any) which he shall have become entitled to receive as his share of the net profits of the said business.

Provisions for the admittance of two of the sons of [A. B.] into the firm on their coming of age.

20. If and when [F. B.] and [G. B.], two of the sons of the said [A. B.], shall respectively attain the age of twenty-one years, the said [A. B.] shall be at liberty to introduce them or either of them into the partnership, and at once or from time to time, by will or otherwise, to give to the son or sons whom he shall so introduce the whole or any part or parts of the moiety of him the said [A. B.] in the partnership, but so nevertheless that whilst the said [A. B.] shall remain a member of the firm for the time being, he shall retain as his own share in the partnership at least one-third part of such moiety. And further, that in case the said [A. B.] shall die before he has introduced a son into the partnership, or, having previously introduced a son, shall not by will or otherwise have given the whole of his moiety in the partnership to such son, the said [F. B.] and [G. B.] respectively, or such one of them as may not have been previously admitted, provided they or he signify their or his election within twelve calendar months after their or his respectively attaining the age of twenty-one years, or after the death of the said [A. B.], whichever shall last happen, shall be entitled to be admitted partners or a partner in the partnership firm, as from the time of signifying such election, and to such a share as the said [A. B.], by will or otherwise, shall have prescribed, or in default thereof to such a share as will give the whole moiety of the said [A. B.] between them in equal shares, or in case only one of such sons shall so become a partner, then so as to give to such son the whole of the said moiety: And further that after the death of the said [A. B.], whilst he may have only one son in the business, such son, subject to any contrary directions which shall have been given by the said [A. B.] by his will or otherwise, shall be entitled to the whole of his father's moiety in the meantime, and until it shall be ascertained that another son of the said [A. B.] will be admitted into the firm: And further, that if on the death of the said [A. B.] he shall have no son in the firm, and shall not by will or otherwise have signified his intention to ex-

In case [A. B.] shall die leaving no son or only one son in the firm.

If [A. B.] shall die leaving no son in the firm, and

III. Articles of Partnership between Two Tin-Smelters.

clude all his sons from being admitted into the partnership, his executors or administrators shall be entitled to his moiety of the profits of the said business, whilst the same shall be continued by his surviving partners or any of them, and until it shall be ascertained whether a son of the said [A. B.] will be admitted into the firm for the time being, charged nevertheless with £—— per cent. on the annual amount thereof, and so in proportion for any less period, by way of compensation, to such surviving partners or partner, for their trouble in realising the profits of the business, the said executors or administrators allowing the share of capital of the said [A. B.] to remain in the business for the same period: And further, that if the said [F. B.] shall die without having been admitted, or shall elect not to be admitted into the partnership, the said [A. B.] shall have power, by will or otherwise, to substitute another son, whose name in such case shall for all purposes be deemed to have been inserted in these presents, and in every subsequent document, if any, relating hereto, instead of the said [F. B.]; And each son who shall so be admitted a partner as aforesaid shall continue in the business until there shall cease to be any other member of the firm, or any other person entitled to become a member thereof: And further, that no son of the said [A. B.] shall be entitled to be admitted into the partnership until he shall have executed a deed of accession containing covenants on his part to observe all the stipulations of the partnership articles so far as applicable to his share and the position he will occupy in the firm, and particularly a covenant diligently to employ himself in the business thereof: And further, that each such son shall bring into and employ in the partnership an amount of capital bearing the same proportion to his share in the partnership as his father's original capital bore to his share therein, and the father's share of capital shall from time to time be reduced accordingly.

without leaving, signified his intention to exclude his sons from being admitted, provision as to carrying on the concern until the admittance of a son.

Power for [A. B.] by will to substitute another son for [F. B.].

No son to be admitted without executing a deed.

As to capital to be brought in by each son.

21. [*Similar clauses as to the introduction of two sons of the said* [*C. D.*]].

Expulsion clause.

22. In case any partner, for the time being, shall become insane or insolvent, as to his private estate, or compound with his separate creditors, or make any proposal for that purpose, or suffer any execution or process to issue against the partnership estate in respect of his own separate debts or contracts, it shall be lawful for the other partners or partner,

III. Articles of Partnership between Two Tin-Smelters.

at any time within —— calendar months next after the same shall have come to their or his knowledge, to give to the partner so acting notice in writing announcing a dissolution of the partnership, and immediately thereafter, or at such other future time as in the said notice shall be named, the partnership shall, so far as the offending partner is concerned, but not further or otherwise, wholly determine in like manner as if such partner were then dead, but without prejudice to any right of action which the other partners, or any of them, would otherwise have had, and the partners or partner giving such notice shall be at full liberty forthwith to advertise the same in the "London Gazette" and any other public paper or papers, or in any other manner whatsoever, and the share of the partner expelled or excluded under this provision in the capital and profits of the partnership, shall be ascertained and paid out in the same manner in all respects as is hereinafter provided with respect to the share of a retiring or deceased partner.

Retirement of partners.

23. Either of them, the said [A. B.] and [C. D.], shall be at liberty to retire from the partnership in pursuance of —— calendar months' notice in writing; but, nevertheless, except in the case of the previous retirement of the said [A. B.], the said [C. D.] shall not be at liberty to retire in pursuance of any such notice until the expiration of —— years from the commencement of the partnership, and in case of any such retirement, the powers of the partner so retiring in relation to his sons shall cease, unless at the time of his retirement he shall have a son in the firm, in which case, notwithstanding his retirement, he shall be at liberty by will or otherwise to exercise the aforesaid powers so far as applicable to the admission of another son.

Provision in case of death of any partner that his share shall go to the survivor subject to any provisions afterwards contained.

24. Upon the death of any partner, whether the said [A. B.] or [C. D.], or any son of either of them, or upon the retirement of the said [A. B.] or [C. D.], the share of the partner so dying or retiring, except so far as is herein otherwise provided, or shall be otherwise provided in pursuance of any power herein contained, shall go and belong to the surviving or continuing partners or partner, and if more than one, then rateably according to their respective shares of the time being in the said business.

Share of partner dying

25. Upon the death of any of the partners, or on the retirement of either of them, the said [A. B.] and [C. D.], the

III. Articles of Partnership between Two Tin-Smelters.

share of the partner so dying or retiring in the capital and profits of the said business shall be ascertained, paid out, and secured in manner following, that is to say: If such death or retirement shall happen within —— calendar months next after any annual account shall have been taken as directed by the 17th clause of these presents, then and in such case the share of the partner so dying or retiring shall be ascertained from the annual account lastly preceding such death or retirement, but if such death or retirement shall happen before the first annual account shall have been taken, or after the expiration of —— calendar months next after any such annual account, then and in such case a full and general account shall be made and taken of all purchases and sales which shall have been made subsequently to the commencement of the partnership, or to the last general account, as the case may be, up to the day of such death or retirement, and of the stocks, credits, and liabilities of the firm, and a just valuation shall be made of all the particulars included in such account, which shall be capable of valuation, and the value of the share of the partner so dying or retiring as aforesaid, in the capital and profits of the business, shall be ascertained and determined, allowance being made for such debts then owing to the firm as shall be considered bad or doubtful.

or retiring to be wound up, &c.

Continuing or surviving partners to enter into a bond for securing payment of share of deceased or retiring partner.

26. The continuing or surviving partners or partner, and their or his executors or administrators, shall, at their or his own expense, within —— calendar months from such death or retirement as aforesaid, enter into a joint and several bond, or a sole bond, as the case may be, in a sufficient penalty for securing the payment by —— equal instalments at six, twelve, eighteen, and twenty-four calendar months respectively, computed from the day of the death or retirement of such dying or retiring partner, of his ascertained share of the capital and profits of the said business, and the payment together with each such instalment of interest at the rate of —— per cent. per annum, on so much of the principal amount as shall for the time being remain unpaid, such interest being computed from the day of such death or retirement, or from the last preceding payment as the case may be; And such bond shall be so framed as to indemnify the estate of the partner so dying or retiring and his heirs, executors or administrators, against all the liabilities of the partnership, and as to make all the moneys thereby secured to become immediately payable, unless

III. Articles of Partnership between Two Tin-Smelters.

all and every the persons or person (if any), who, after such death or retirement as aforesaid, shall become partners or a partner in the said firm by virtue of the provisions in that behalf herein contained, shall within —— calendar months after so becoming partners or a partner enter into a bond to the same effect as that hereinbefore mentioned, regard being had to payments previously made and to intervening circumstances.

On receipt of such bond, the retiring partner, or the executors or administrators of a deceased partner, to make over share to continuing or surviving partners.

27. Upon the receipt from the continuing or surviving partners or partner of the said bond mentioned in the last preceding clause, the retiring partner or the executors or administrators of the deceased partner shall, in such manner as the continuing or surviving partners or partner shall require, assign and make over to them or him all the assets of the partnership, and empower them or him to recover and enforce all outstanding credits and contracts.

28. [*Arbitration clause, if required, ut ante,* p. 378.]

In witness, &c.

IV. *DEED of PARTNERSHIP between* Solicitors, *with Clauses relating to the* Custody *of* Drafts, Papers, *&c.; and for* Allowance *for* Deficiency *in the* Actual *below the* Estimated *Amount of Business brought by each Partner* (*z*).

THIS INDENTURE (*a*), made the —— day of ——, 18—, Between [A. B.], of, &c., solicitor, of the one part; and

Parties.

(*z*) It is common for partnerships between solicitors and other professional men to be formed upon terms such as the following:— An established firm of large practice takes in a junior partner, on his paying, for the purchase of the share to be held by him, a sum calculated on the average profit of the business for an antecedent period, (frequently two years and a half purchase on the average profit of the last seven years); and if the incoming partner has been also in practice, the calculation usually is made on the excess of the profit of the purchased share over that of his own business during the same period, with a provision sometimes, as in the text, that either party shall make an allowance for any deficiency which

As to partnerships between solicitors.

(*a*) Stamp, 10*s*.

IV. Articles of Partnership between Two Solicitors.

[C. D.], of, &c., solicitor, of the other part. WHEREAS the said [A. B.] and [C. D.] have agreed to enter into partnership as solicitors, in the city of London, for the term of ——, and under the stipulations and provisions hereinafter contained.

Recitals: of agreement to become partners;

AND WHEREAS the said [A. B.] and [C. D.] have respectively been for some years in practice; and the practice of the said [A. B.] is on an average of the last three years estimated to produce the net yearly profit of £——, at the least; and the practice of the said [C. D.], on a similar average, is estimated to produce the net yearly profit of £——, at the least:

of the average amount of their respective businesses (*a*).

AND WHEREAS it is intended, as hereinafter stipulated, that the said [A. B.] shall be entitled to three fourth parts of the net profits to arise from the partnership business intended to be

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shall be found to arise in the *actual* as compared with the *estimated* amount. A person paying a premium on his introduction to a business should keep in view the possible event of his death before the income of the business shall have yielded him an adequate return, and the articles should expressly provide as to whether in that event any part of the premium is to be returned or not. In the event of the death of the incoming partner who has paid a premium, shortly after the formation of the partnership, it seems fair that the surviving partner should return part of the premium, or give to the representatives of the deceased partner an interest in the profits for a certain period, if the business be carried on, or in the money produced by the sale of the good-will, if it be disposed of. As to the validity of the sale of the good-will of a solicitor's business, *vide ante*, Vol. II., p. 337.

Where a solicitor, who had received a large sum from a person, as a consideration for a partnership of five years, determined the partnership by his own act within thirteen months after its commencement, by suing out a commission of bankruptcy against his partner, the Court of Exchequer was of opinion that a proportional part of the consideration money ought to be returned: *Hamil* v. *Stokes*, 4 Price, 161. In the ordinary case, however, of the determination of a partnership by the bankruptcy of a partner who has received a premium for the good-will, the solvent partner has no claim to any allowance on such account, as this is a risk necessarily incidental to the connexion, every partnership being liable to determine by bankruptcy: *Akhurst* v. *Jackson*, 1 Swanst. 85.

As to a solicitor making an allowance to the representatives, or widow, or children, of a deceased partner out of the profits of his business, see *ante*, p. 235.

(*a*) This recital is intended to explain and put on record the position of the parties, and has special reference to the arrangement as to taking the average of business brought in by the respective partners during the first three years of the partnership contained in Clause 8; if that clause is omitted, this recital will not be required, and may be omitted accordingly.

IV. Articles of Partnership between Two Solicitors.

hereby established; and that the said [C. D.] shall be entitled to the remaining one fourth part of such net profits; wherefore, on the assumption that the net profits of the said partnership business will amount in every year to the full sum of £—— (being the aggregate amount of the estimated profits of the respective businesses of the said [A. B.] and [C. D.]), the three fourth parts of the said [A. B.] of the said profits will amount to the sum of £——, at the least, and the one fourth part of the said [C. D.] thereof will amount to the sum of £——, at the least, and that the share of the said [C. D.] of the profits of the intended partnership business will exceed the estimated profits of his present practice by the sum of £——, it has been agreed that the said [C. D.] shall pay to the said [A. B.] the sum of £——, being the amount of three years' purchase of the said excess or sum of £——. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement and in consideration of the sum of £——, now paid by the said [C. D.] to the said [A. B.], the receipt whereof the said [A. B.] hereby acknowledges each of them the said [A. B.] and [C. D.] hereby so far as the covenants and agreements hereinafter contained are to be observed and performed by him, his executors, or administrators, covenants with the other of them, in manner following, that is to say:—

Testatum.

In consideration of a sum of money paid by one partner to the other.

1. The said [A. B.] and [C. D.] shall become and continue partners in the profession or business of solicitors, for the term of —— years from the date hereof, if they the said [A. B.] and [C. D.] shall so long live.

Agreement to become partners.

2. The business shall include the ordinary business of solicitors, and also conveyancing, and acting as agents for country solicitors, and as auditors and receivers of rents and profits, and the holding of any other offices and appointments of profit usually held by solicitors. The partnership business shall be carried on under the style or firm of "[B.] and [D.]," at the offices or chambers which have been taken by the said partners in —— Square, or at such other place as the said parties shall from time to time agree upon.

Nature of business.

Place of business, and of firm.

3. The capital of the partnership shall consist of the sum of £——, and of such other sum or sums of money as shall from time to time be wanted for carrying on the said business to advantage, which capital shall be brought in by the said [A. B.] and [C. D.], in the same proportions as they

Cap

IV. Articles of Partnership between Two Solicitors.

shall respectively, for the time being, be entitled to the profits of the said partnership; and the said sum of £—— shall be paid by them in the said proportions to the bankers of the partnership, on account thereof, on or before the —— day of —— next.

Bankers.

4. Messrs. —— & Co., or such other house as the said parties shall jointly approve, shall be the bankers of the partnership.

Interest on capital advanced.

5. If either of the partners shall at any time or times advance or pay, to or for the use or benefit of the said partnership, any sum or sums of money beyond the proportion which he is to bring in or contribute, under Clause 3, then the partner so advancing such sum or sums of money shall be paid and allowed interest thereon after the rate of £5 per centum per annum, before any division of profits shall be made.

Cheques, &c. how to be drawn.

6. All cheques, bills of exchange, and promissory notes, made, drawn, indorsed, and accepted by either of the said partners on the joint account of the said partnership, shall be made, drawn, indorsed, and accepted in the name of the firm.

Shares of partners.

7. The partners shall be respectively interested in and entitled to the capital, property, and profits of the partnership business in the proportions following (that is to say): three equal fourth parts shall belong to the said [A. B.], and the remaining one fourth part thereof shall belong to the said [C. D.]

Average of net gains to

8 (*b*). At the end of the first three years of the partnership,

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(*b*) This clause contains provisions of a special nature and may be omitted, if desired, without otherwise affecting the form or contents of this precedent, except as regards the recital on p. 398. See p. 398, note (*a*).

The following clause may be substituted for the above, if it is intended that a part of the premium shall be returned if the net profits of the business do not reach the estimated amount:—

If, at the end of four years, the clear profits do not amount to £——.

"8A. If it shall so happen that the net profits arising from the business of the partnership, including premiums with any articled clerks and all such fees, emoluments, and benefits to arise from any office, as hereinafter mentioned, (after payment of or deducting thereout the rent of the offices or chambers where the partnership business shall be carried on, and all outgoings with respect thereto, and the salary or wages of

it shall be ascertained what on the average of such three years the net profits of the business, which shall have come through each of them the said [A. B.] and [C. D.], shall have amounted to in each such three years; in ascertaining which net profits no deduction shall be made on account of the salaries of clerks, rent of offices, and other general expenses attending or incident to the management and conduct of the business, but only for the disbursements and expenses incurred in the particular matters of business included in such computation: And if it shall appear that the net profits of the business which shall have come through the said [A. B.] have not, on the average of the said first three years, amounted in each of such years to the sum of £——, and that the net profits of the said business which shall come through the said [C. D.] have, on the average of the said first three years, amounted in each of such years to the sum of £——; Then the said [A. B.], his executors or administrators, shall, on demand, pay to the said [C. D.], his executors or administrators, three-fourth parts of the difference between the aggregate amount of the net profits, for the first three years, of the business which shall have come through the said [A. B.], and the sum of £——, the aggregate amount, for the said three years, of the sum of £——, the estimated yearly profits of the business or practice of the said [A. B.]; And if it shall appear that the net profits of the business which shall have come through the said [C. D.] have not, on the average of the said first three years, amounted in each of such years to the sum of £——; and that the net

be ascertained at the end of the first three years.

Allowance to be made on account of deficiency in the business brought by the respective partners.

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clerks and servants, and all other office expenses and disbursements), shall not, at the end of the first four years of the said term, in case both the said parties shall be then living, upon the accounts of the partnership fairly stated and settled, appear to be in specie or in the books the net sum of £——, Then and in such case the net profits shall be deducted from the said sum of £——; and the said [A. B.] shall return and pay to the said [C. D.], out of the said sum of £——, the consideration money aforesaid, one equal fourth part of the sum which upon such account the said profits shall be found to fall short of £——, in order to make the profits of the said [C. D.] in such joint business for the first four years of the said term equal to one equal fourth part of the said sum of £——."

[A.B.] to pay a moiety of the deficiency to [C. D.] as a return of premium.

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profits of the business which shall have come through the said [A. B.] have, on the average of the said first three years, amounted in each of such years to the sum of £——; Then, the said [C. D.], his executors or administrators, shall, on demand, pay to the said [A. B.], his executors or administrators, one-fourth part of the difference between the aggregate amount of the net profits, for the first three years, of the business which shall have come through the said [C. D.], and the sum of £——, the aggregate amount, for the said three years, of the sum of £——, the estimated yearly profits of the business or practice of the said [C. D.]: And if it shall appear that the net profits of the business which shall have come through each of them the said [A. B.] and [C. D.] have not, on the average of the said first three years, amounted in each of such years, as to the business coming through the said [A. B.], to the sum of £——, and, as to the business coming through the said [C. D.], to the sum of £——; Then, if the surplus of the one-fourth part of the said [C. D.], of the aggregate amount for the said three years of the net profits of the whole of the partnership business coming through as well the said [A. B.] as the said [C. D.], after deducting or giving credit for the aggregate amount for the said three years of the net profits of the business which shall have come through the said [C. D.], shall amount to less than the sum of £——, the consideration so as aforesaid paid by the said [C. D.] to the said [A. B.], the said [A. B.], his executors or administrators, shall, on demand, refund to the said [C. D.], his executors or administrators, the difference between the amount of such surplus and the said sum of £——; But if the surplus of the one-fourth part of the said [C. D.] of the aggregate amount for the said three years of the net profits of the whole of the said partnership business, after making such deduction or giving such credit as aforesaid, shall amount to more than the said sum of £——; Then he the said [C. D.], his executors or administrators, shall, on demand, pay to the said [A. B.], his executors or administrators, the difference between the said sum of £—— and such last-mentioned surplus; And if it shall appear that the net profits of the business which shall have come through the said [A. B.] have, on the average of the said first three years, amounted in each of such years to the sum of £——, or more than that sum; and that the net profits of the business which shall have come

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through the said [C. D.] have, on the average of the said first three years, amounted in each of such years to the sum of £——, or more than that sum; Then no allowance is to be made or paid by either of them the said [A. B.] and [C. D.] to the other of them, in consequence of the net profits of the business which shall have come through one of them being more or less, or proportionately more or less, than the net profits of the business which shall have come through the other of them.

Premium to be retained in case of death.

9. If both or either of them the said [A. B.] and [C. D.] shall die before the expiration of the said first three years of the partnership term, then the said [A. B.], his executors or administrators, shall be entitled to retain the whole of the said consideration or sum of £—— (*c*); and no allowance shall be made by either of them the said [A. B.] and [C. D.], or his executors or administrators, to the other of them, or his executors or administrators, on account or in the event of the net profits of the business which shall have come through them the said [A. B.] and [C. D.] respectively, amounting to less than the said respective estimated yearly sums of £—— and £——.

Agents, clerks, &c.

10. No [change shall be made in the London agents of the firm, and no] articled or other clerk, pupil, or servant shall be taken, &c. [*ante*, p. 383].

Premiums, &c., to be considered as profits.

11. All premiums which shall be received with articled clerks, and all fees, emoluments, and benefits that shall arise from the exercise by the said partners respectively of the offices of agent, steward, receiver, of any other person or persons, or of the office of vestry clerk, or of any other public

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(*c*) As to a partner's right to a return of premium paid on entering into partnership, *vide ante*, p. 269. If part of the premium is to be returned in case of death the following clause may be substituted for the above:—

If [C. D.] die within two years, [A. B.] to allow moiety of the premium.

If [A. B.] die within two years, his representatives to make an allowance.

"9A. If the said [C. D.] shall die at any time within the space of two years from the commencement of the partnership, and the said [A. B.] shall survive him, then and in such case the said [A. B.] shall and will allow to the executors or administrators of the said [C. D.] the sum of £——, being a moiety of the said sum of £——: But if the said [A. B.] shall die within the space of two years from the commencement of the partnership, and the said [C. D.] shall survive him, then and in such case the executors or administrators of the said [A. B.] shall pay to the said [C. D.] the sum of £——, for his own use."

IV. Articles of Partnership between Two Solicitors.

office or appointment whatever, shall be considered and accounted for as profits of the partnership.

Sums to be drawn out monthly by the respective partners.

12. The said [A. B.] shall be at liberty to draw out of the funds of the partnership for his personal expenses the sum of £—— by monthly instalments, during any current year of the partnership; and the said [C. D.] shall be at liberty to draw out the annual sum of £—— in the like manner; and the sums which shall be so respectively drawn out by the said partners shall be in part or in full satisfaction, as the case may be, of their respective shares of the profits of the partnership (*d*).

Expenses and out-goings.

13. The rent, taxes, costs of fire insurance, and other expenses which shall become payable in respect of the offices or chambers in which the partnership business shall be carried on, the expenses of providing stationery, and of paying clerks and servants to be employed in the partnership business, the expense of fees to counsel, and of travelling, and all other charges and expenses which may be incurred by the partners respectively in the course of the said business, including expenses of and incident to the performance of the duties of any such office or appointment as aforesaid, and all losses, costs, and damages which may be incurred on account of the said business, shall be paid and borne out of the profits of the said business, or out of the capital stock, estate, and effects of the said business, except any such loss or damage shall happen through the wilful neglect or default of either of the partners; in which case the same shall be made good by the person through whose default the same shall happen.

Books of account.

14. The partners respectively shall, from time to time during the continuance of the partnership, write or cause to be written into the books of account which shall be kept for that purpose, true, plain, and perfect entries of all such

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(*d*) If so intended, add,

Partners to refund excess drawn out.

"But if the sums drawn out as aforesaid by the said partners, or either of them, during any current year of the partnership, shall exceed the amount of their or his respective shares or share of the net gains and profits which shall have accrued in such year, then such partners or partner shall respectively refund such excess as soon as the same shall be ascertained at the taking of the general yearly account as hereinafter mentioned."

IV. Articles of Partnership between Two Solicitors.

monies, attendances, and business as shall be received, paid, or transacted by the partners, or either of them, or their clerks or agents, and of all such other matters or things as shall be or ought to be entered in the same books in the usual and regular course of the said business, with all such circumstances of names, times, and places as may be necessary or convenient for better understanding the same. And the said books of account, together with all deeds, securities, letters, and documents belonging or relating to the partnership, shall be kept in the offices of the partnership, or some other place to be appropriated for the purpose by mutual consent; and shall at all convenient times be open to the inspection of both the partners.

General annual accounts.

15. During the continuance of the partnership, within two calendar months after the —— day of —— in every year, unless the partners or either of them shall be prevented by illness, and then as soon after the said period as circumstances will permit, a full and general account in writing shall be made and taken of all the monies, credits, and effects, and of all debts and liabilities of the partnership: which annual account shall, within the time aforesaid, be entered in two books, to be respectively signed by the said partners; and after such signature each of the said partners shall take one of the said books into his custody, and shall be bound by the said account, unless some manifest error shall appear therein, and be notified within the space of twelve calendar months next after the taking of such account, and then the said account shall be opened so far only as to rectify such error: And upon the making up of every such yearly account, all interest which shall become due to either of the partners for any sum or sums of money to be advanced by him to the partnership, shall, in the first place, be taken by the partner advancing the same; and afterwards the partners respectively shall divide between them, in the proportions aforesaid, the clear profits of the partnership business which shall have accrued or been gained in the preceding year.

Attention to business.

16. The partners respectively shall be true and just to each other in all their transactions and dealings, and shall, at all times during the partnership, devote their whole time and attention to the conduct and management of the said business and the concerns of the partnership, unless they shall be prevented by sickness or other reasonable cause of excuse arising

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without their own respective default. [Provided always that the said [A. B.] shall not be required to act as an advocate.]

17. [*Partners to give each other information, ante*, p. 383.]

Neither partner to undertake any action, &c., after being required by the other not to do so.

18. Neither of the said partners shall undertake the prosecution or defence of any action or other legal proceeding, or transact any professional business, except on behalf of himself or his wife or children, or his, her, or their trustees, or enter into any contract with any person or persons, after he shall be requested in writing by the other partner not to do the same.

Not to compound or release debts.

19. Neither of the partners, without the consent of the other of them, shall compound, release, or discharge any debt due to the partnership, without receiving the full amount thereof, or shall draw or accept any bill of exchange or promissory note, or contract any debt on account of the partnership, except in the usual and regular course of business, and for the benefit of the partnership.

Not to assign share, &c.

20. Neither of the said partners shall assign over his share or interest in the partnership effects, or withdraw for his private use the whole or any part of his share of the capital of the partnership, or become bail or surety for any person or persons whomsoever, or carry on, either separately or in partnership with any other person or persons, the profession or business of solicitor, or conveyancer, or any other trade or business whatsoever, without the consent of the other of them, or knowingly or willingly do or permit any act, matter, or thing whatsoever by means of which the partnership monies or effects shall be seized, attached, extended, or taken in execution.

21. [*Expulsion clause for breach of particular stipulations, ut ante*, p. 376; or *general expulsion clause, ut ante*, p. 379.]

Expelled partner not to practice for a certain period.

22. In case the partnership shall be dissolved by notice under the clause lastly hereinbefore contained, the partner to whom such notice of dissolution shall have been given, shall not nor will, for the space of seven years thenceforth, either alone or in partnership with any other person or persons, practise or engage in the profession or business of a solicitor or conveyancer at —— aforesaid, or within the distance of ten miles therefrom [*or*, shall not nor will, either alone or in partnership with any other person or persons, for the space of seven years after the dissolution of the said partnership, be concerned professionally, or transact any business, either as principal or clerk, for any person or persons who shall have been a client or clients of the said partnership]: Provided

Or not to transact business for the clients of the firm.

On breach of

IV. Articles of Partnership between Two Solicitors.

always that if such partner shall in any respect break or infringe this present covenant, then and in such case he the partner so breaking or infringing the same, his executors or administrators, shall immediately thereupon pay to the other of the parties hereto, his executors or administrators, the sum of £—— as and for liquidated damages, and not by way of penalty.

covenant to pay a certain sum as liquidated damages.

23. If the partnership shall determine by the decease of either of the partners during the said term of —— years, the surviving partner, and the executors or administrators of the deceased partner shall, as soon as conveniently may be after the determination thereof, make out a statement of the accounts and transactions of the partnership up to the period of such decease; and the surviving partner shall proceed with all convenient speed to collect and get in the credits of the partnership; and after paying thereout all and every sum and sums of money owing by the partnership, shall, from time to time, as often as the monies in his hands shall amount to the sum of £——, pay over to or account with the executors or administrators of the deceased partner for their share or proportion thereof; and the expenses attending the winding up and adjustment of the said accounts, and the collection and receipts of the said credits, shall be paid out of the partnership funds.

Adjustment of accounts on the decease of either partner.

24. In the event of the determination of the partnership by the means last aforesaid, the printed books, office fixtures, and furniture, and other property of the partnership (except as hereinafter mentioned) shall be valued by two indifferent persons, the one to be chosen by the surviving partner, and the other by the executors or administrators of the deceased partner; and the same shall be purchased by the surviving partner, if he shall think fit, at the amount of such valuation; and the sum so to be paid by him shall form part of the partnership effects; but all deeds, drafts of deeds, and other papers belonging to clients or otherwise, which shall be in the custody of the said partners or either of them, on account of the partnership, at the time of the decease of either of them as aforesaid, shall (subject to the claims of the persons, if any, to whom they may happen to belong) remain in the hands of or be delivered to the surviving partner (*e*).

Books, &c., to be valued.

(*e*) In preparing articles of partnership between solicitors, provision should always be made, in the event of a dissolution, for the destination of the papers in the possession of the firm; this

As to the custody of drafts and other papers.

IV. Articles of Partnership between Two Solicitors.

25. In case of the dissolution of the partnership by effluxion of time, or otherwise, during the lives of both the

being a point of considerable importance where the dissolving partners intend to practise separately, because, *cæteris paribus*, clients generally resort to the partner who has the custody of their papers. It is true, indeed, that the drafts and copies of deeds usually retained by solicitors belong to the clients themselves, and the Court of King's Bench ordered them to be delivered up at the instance of a client, at whose expense they had been prepared, on the ground that "he who pays for the drafts by law has a right to the possession of them." *Ex parte Horsfall*, 7 B. & C. 528. And on this principle, it was held in another case, that any attorney who was concerned for both the vendor and purchaser in preparing a conveyance (the same being paid for by them in moieties) was precluded from producing the draft to the prejudice of the purchaser's devisees: it being considered that he was, under the circumstances, concerned for both parties, and not for the vendor only, though the purchaser had employed another solicitor to approve the draft on his behalf: *Doe* d. *Strode* v. *Seaton*, 2 A. & E. 171. Upon a similar principle, too, Sir J. *Leach*, V.-C., refused the aid of equity to a solicitor seeking to take such papers out of the custody of the assignees of his late partner, who had become bankrupt, his Honour observing "that he had no right to order the papers of the clients to be delivered to one of the partners without the consent of the clients." *Davidson* v. *Napier*, 1 S. & St. 97.

It is not readily to be inferred from this case that the Courts would in no instance enforce a stipulation between solicitors respecting the custody of their client's papers; for, though such a stipulation might be, and undoubtedly is, void in regard to the clients, there seems to be no reason why it should not be binding on the parties themselves: see *Whittaker* v. *Howe*, 3 Beav. 383, where the observance of a stipulation of this nature, was enforced by injunction. In *Davidson* v. *Napier*, it does not appear that there was any agreement between the parties respecting the custody of the papers: and, therefore, the assignees of the bankrupt partner had as good a right to the possession of them as the solvent partner, or, in other words, the assignee of one tenant in common was entitled to retain against the other tenant in common the possession of their common property.

Division of business on dissolution.

Solicitors dissolving partnership frequently agree to divide the business pending in the office; but such an arrangement is, upon a principle analogous to that just adverted to, void against the clients, who, having employed both, have a right, under such retainer, to the benefit of their joint exertions.

Where two solicitors in partnership had been concerned in defending a suit, and they having dissolved partnership, the party to the suit continued to employ one of them, Lord *Eldon* held that the other was not entitled to consider himself as discharged, so as to be capable of acting for the opposite party: *Cholmondeley* v. *Clinton*, 19 Ves. 261. The client in this case had employed one of the late partners; but the rule, it is apprehended, is not confined to such a case, but would apply, if he had refused to employ

[IV. Articles of Partnership between Two Solicitors.

partners, the partners shall, as soon as conveniently may be after such dissolution, make out a general statement of the partnership affairs, and transactions, and pecuniary accounts; and, after making an effectual provision for the liquidation of the debts owing from the partnership, shall make a distribution, division, and allotment of the partnership credits, property, and effects between them, according to their said several proportions and interests therein; or in case it shall be deemed more expedient so to do, the same credits, property, and effects shall be collected, got in, and converted into money on the joint account of the partners: And the deeds, drafts of deeds, and other documents and papers in the custody of the said parties respectively as such partners as aforesaid, shall be divided between them in manner following (that is to say): The papers relating to the business of persons who were clients of either of the partners before the formation of the partnership, shall (unless the contrary be expressly directed by such clients) be committed to the custody of the partner whose clients such persons formerly were; and with respect to the papers relating to the business of clients not included in this class, the same shall be equally divided between the partners: And in case any dispute shall arise as to the custody of the papers in any particular business, it shall be referred to the client, to whose business they relate, to determine to which of the partners the said papers shall be delivered. Provided, nevertheless, that nothing herein contained shall prejudice or affect any lien which the said parties may have, either on the partnership account or otherwise, on any deeds or writings in their respective hands or custody.

Provision as to the custody of the papers belonging to the firm.

Disputes respecting them to be referred to client.

26. Save as is herein otherwise provided, if at any time any dispute, &c. [*continue ut ante*, p. 378.]

Arbitration clause

In witness, &c.

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either separately: both the partners would still have been incapacitated from being concerned against him, the relation of solicitor and client having been determined by their own act, and not by that of the client; and their situation, therefore, being analogous to that of a person who has voluntarily withdrawn from the management of a suit: *Cook* v. *Rhodes*, 19 Ves. 273, n.

It would seem that in the case of an ordinary solicitor's business nothing of the nature of goodwill can be taken into account as part of the partnership assets: *Arundell* v. *Bell*, 49 L. T. 345; S. C. 31 W. R. 477.

Goodwill.

V. ARTICLES OF PARTNERSHIP *between two* SURGEONS *and* APOTHECARIES.

Parties.

Recitals: That partner has practised as surgeon.

Agreement to admit into partnership.

Testatum.

Mutual covenants.

THIS INDENTURE (*f*), made —— day of ——, 18—, BETWEEN [A. B.], of the one part, and [C. D.], of, &c., of the other part: WHEREAS the said [A. B.] has for some years past carried on the business of surgeon and apothecary at the surgery now occupied by him as tenant from year to year in —— Street, in the parish of —— aforesaid; AND WHEREAS the said [A. B.] has agreed to admit the said [C. D.] into partnership with him in the said business upon the terms and conditions and under and subject to the provisions hereinafter expressed. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the said [C. D.] to the said [A. B.] by way of premium, the receipt whereof the said [A. B.] acknowledges, each of them, the said [A. B.] and [C. D.], so far as the covenants and agreements hereinafter contained are to be observed by him, his executors or administrators, hereby covenants with the other of them in manner following, that is to say,

To be parties for a term determinable.

1. THE said [A. B.] and [C. D.] will become and continue partners in the business of a surgeon and apothecary for the term of blank years commencing from the —— day of —— last, if both of them shall so long live, but subject to be determined as hereinafter provided.

Business to be carried on at place agreed upon.

2. THE business of the partnership shall be carried on under the style or firm of "[A. B.] and [C. D.]," at the said surgery occupied by the said [A. B.] as aforesaid, or at such other surgery, as shall be agreed upon by the partners.

Medical books, &c., to remain property of partner, but be used in common.

3. ALL the medical and surgery books and instruments belonging to the said [A. B.], and the fixtures in the said surgery, shall continue the sole property of the said [A. B.], but shall be kept at the said surgery, and used as if the same were the joint property of the partnership for all the purposes of the business thereof, all damages thereto (except ordinary wear and tear) being made good from time to time out of the funds of the partnership.

Drugs, &c., to become joint property.

4. ALL the drugs, glass bottles, and other glass now belong-

(*f*) Stamp, 10*s*.

V. Articles of Partnership between Medical Practitioners.

ing to the said [A. B.], and provided by him for the purposes of his said business, except the labelled glass bottles upon the shelves of the said surgery, shall become the joint property of the partnership, and in consideration thereof the sum of £——, being one-half of the amount of the invoice price of the same articles, shall be paid by the said [C. D.] to the said [A. B.] within —— days from the date of these presents.

To pay half their value.

5. The partners shall be interested in the said joint property of the partnership, and in the net gains and profits of the said business thereof in equal shares.

Partners to be interested in equal shares.

6. The salaries and remunerations for the said several appointments of —— and —— now held by the said [A. B.] and for all other appointments which may be held by the partners, or either of them, and all premiums with apprentices, and all pecuniary presents, gratuities from patients, and all other professional emoluments whatsoever, whether ordinary or extraordinary, which may be received from time to time by the partners, or either of them, shall be treated as gains and profits of the business of the partnership, and accounted for accordingly.

Salaries, &c., to be treated as partnership profits.

7. One of the partners shall always reside at the surgery at which the business of the said partnership shall for the time being be carried on, and the said [A. B.] shall at all times have the option of being such resident partner; and the partner who for the time being shall not be resident, shall at all times reside within —— from the said surgery, and shall be allowed out of the funds of the partnership the monthly sum of £—— for the purpose of providing him with a proper residence.

One partner to reside at surgery.

Non-resident partner to be allowed for a residence.

8. The rent and also the rates and taxes of the surgery at which the said business shall for the time being be carried on, and all expenses of repairs and insurance, and other outgoings relating thereto, and the said monthly allowance of £—— to the partner who for the time being shall not reside therein, and all expenses of providing drugs and other articles required for the purposes of the business of the partnership, and of making good all damages (except ordinary wear and tear) to the said medical and surgical books and instruments, fixtures, and labelled bottles, which are to continue the sole property of the said [A. B.], and all salaries and expenses of assistants, apprentices, messengers, and servants connected with the said business (the expenses of each apprentice in-

Rent, &c., allowance, and expenses to be paid out of profits; if none, by partners equally.

V. Articles of Partnership between Medical Practitioners.

cluding [E. F.], the present apprentice of the said [A. B.] being always computed at —— per week, and all other expenses and outgoings whatsoever in anywise relating to the business of the partnership, shall be paid out of the gains and profits of the said business, or if the same shall be deficient, by the partners in equal shares.

Accounts to be kept, and proper entries made.

9. Proper books of accounts shall be kept by the partners, and entries immediately made therein of all receipts and payments on behalf of the said partnership, and all other matters and things as are usually entered in similar books of accounts, including all receipts in respect of the salaries by the said [A. B.], and of any future salaries for appointments which may be held by either of the said partners, and of premiums for apprentices, and of pecuniary presents and gratuities from patients, and of all other professional emoluments whatsoever.

Account books to be kept on partnership premises, each partner to have access.

10. Such books of accounts, with all securities, letters, and writings which may concern the partnership shall be kept at the messuage at which the said business shall for the time being be carried on, and each of the partners shall have free access to inspect and examine the same, and take copies and extracts therefrom.

To take half-yearly account.

11. On every —— day of —— and —— day of —— during the continuance of the partnership (beginning with the —— day of —— next) a general account in writing shall be made and taken by the partners of all the moneys, credits, property, and effects, and of all debts and liabilities of the partnership, and such account shall be entered in two books and signed in each book by each of the partners; and after such signature each of the partners shall take one of the said books, and they shall both be bound by every account so signed, except that if any manifest error be found therein within —— calendar months after such signature thereof as aforesaid, such error shall be rectified.

To divide the profits equally;

12. Upon such signature as aforesaid of every general account the net gains and profits of the partnership business appearing thereby, after providing for such outgoings and expenses as aforesaid, shall be divided equally between the partners; but each of the partners shall be entitled to

and draw out in advance.

draw out in advance on the last day of every calendar month the monthly sum of £——, yet so that if upon taking any general account it shall appear that the amount of such monthly sums drawn out by each or either of the partners

during the next preceding half-year exceeds the amount of his share in the net gains and profits appearing by such accounts, the amount of such excess shall be forthwith repaid by him to the accounts of the partnership, and that until such repayment he shall not be entitled to draw out or receive any further sum.

Partners to employ themselves diligently.

13. Both of the partners shall employ themselves diligently in the business of the partnership, and use the utmost endeavour to promote the interest thereof.

To be just and faithful.

14. The partners shall be just and faithful to each other, and furnish to each other, when required, full accounts in writing of all matters and transactions relating to the partnership.

Not to employ partnership funds except for partnership purposes.

15. Neither of the partners shall, without the previous consent in writing of the other of them, employ any monies, property, or effects belonging to the partnership, or engage the credit thereof, except upon the account and for the benefit of the partnership; or enter into any bond, or draw, indorse, or accept any bill of exchange or promissory note, or become bail, surety, or security for any person or persons whomsoever, or subscribe any policy of insurance, or do or knowingly suffer to be done any act or thing whereby or by reason whereof the property or effects of the partnership, or any part thereof, may be attached or taken in execution, or lend any money of the partnership, or otherwise give credit to any person or persons whom the other of them shall, by notice in writing, have forbidden him to trust.

To pay private debts.

16. Each of the partners shall punctually pay and satisfy all his present and future private debts and engagements, and indemnify the other of them, his heirs, executors, and administrators, and the property and effects of the partnership therefrom, and from all actions, suits, damages, and expenses on account thereof.

Either partner may dissolve partnership on notice.

17. It shall be lawful for either of the partners to dissolve the partnership before the expiration of the term of —— years, by giving to the other of them, or leaving for him at his usual or last known place of residence in England, or at the house at which the said business shall for the time being be carried on, —— calendar months' notice in writing of such dissolution.

Proviso that if partnership is dissolved,

18. If the said [C. D.] shall be the partner giving such notice, he shall not at any time thereafter, either alone or in

V. Articles of Partnership between Medical Practitioners.

partnership, carry on or be engaged, directly or indirectly, in the business or as partner of an apothecary or surgeon, or otherwise practise medicine or surgery within —— aforesaid, or within the distance of —— miles therefrom, and in case of his so doing he shall thereupon pay to the said [A. B.], his executors, administrators, or assigns, the sum of £——, which sum, or so much thereof as shall not be so paid, shall be recoverable by the said [A. B.], his executors, administrators, or assigns, as and for ascertained and liquidated damages, and not as in the nature of a penalty (*g*).

[C. D.] shall not carry on business within —— miles of other.

Final account and division to be made on determination;

19. In the event of the determination of the partnership, either by the expiration of the said term of —— years, or by any such dissolution as aforesaid, a general and final account in writing shall be made and taken of the monies, assets, property, and effects, and of the debts and liabilities of the partnership, up to the time of the determination thereof, and the said debts and liabilities, and all debts due to the partnership shall be got in; and all monies payable under the provisions hereinbefore contained out of the gains and profits of the business of the partnership shall be forthwith paid or provided for, and subject thereto all the monies, property, and effects of the said partnership, and all the gains and profits of the business thereof now already divided shall be forthwith divided between the said partners, or their respective executors or administrators, in equal shares.

but either partner may take the share of the other at a valuation.

20. In the event of any such determination of the partnership as aforesaid, it shall be lawful for either of the partners, the said [A. B.] having always the preference, to take at a valuation the share of the other of the partners in the property and effects of the partnership, so that notice in writing of the intention so to do shall be given to the partner proposing to take such share to the other of the partners, or shall be left for him at the surgery at which the business of the partnership shall for the time being be carried on, —— days at least before the determination of the partnership; and so that if the partners taking such share shall be the said [C. D.], he shall take also at a valuation all the medical and surgical books, and instruments, fixtures in the surgery, labelled glass bottles upon the shelves thereof, and other articles and effects whatsoever, then connected with the said

(*g*) See as to this *ante*, p. 375, note (*d*).

business, and belonging to the said [A. B.], and that the whole of the said business shall thenceforth belong to the partner taking such share as aforesaid.

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21. In the event of the determination of the partnership by the death of either of the partners, the surviving partner shall take at a valuation the share of the deceased partner in the property and effects of the partnership, and if such partner shall be the said [A. B.], then the said [C. D.] shall also take at a valuation all the medical and surgical books and instruments, fixtures in the surgery, labelled glass bottles on the shelves thereof, and all other articles and effects whatsoever then connected with the said business, and belonging to the said [A. B.], or to his estate; and shall also pay to the executors or administrators of him the said [A. B.] the sum of £——, and the whole of the said business shall thenceforth belong to the surviving partner.

If either partner die, share to be taken at a valuation.

22. Every such valuation as aforesaid shall be made by two competent persons, or their umpire to be appointed respectively, as is hereinafter provided in the case of arbitrators and their umpire, upon a reference to arbitration; and the amount of every such valuation, and also the sum of £—— in case the same shall become payable, shall be paid within —— calendar months from the determination of the partnership, and shall be secured in the meantime, with interest thereon, at the rate of £—— per cent. per annum, by a bond in a sufficient penalty to be given by the partner by whom the same shall be payable.

Method of taking valuation and securing money to be paid, by bond.

23. Upon any determination of the partnership, whether the property and effects thereof shall be divided between the partners, or the share of either of the partners shall be taken by the other of the partners, proper deeds and other instruments shall be forthwith executed for vesting in the partners respectively, or either of them, the share or shares to which they or he may respectively become entitled under the provisions aforesaid, and for facilitating the recovery of such outstanding property and effects as may be comprised respectively in such shares or share, and also for indemnifying the partners respectively, and their respective executors and administrators (so far as according to the nature of the arrangement they respectively ought to be so indemnified) against the debts and liabilities of the partnership, or any part or proportion thereof respectively.

Proper deeds to be executed on determination of partnership.

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Bond against practising within —— miles of other partner to be given by [C.D.] on dissolution, on notice given by him.

24. In the event of the determination of the partnership upon any notice for the dissolution thereof on the part of the said [C. D.], then, unless under the provisions hereinbefore contained, the share of the said [A. B.] in the property and effects of the said partnership shall be taken at a valuation by the said [C. D.], and he shall thereby become entitled to the whole of the said business. He, the said [C. D.], shall give to the said [A. B.] his bond in a sufficient penalty for securing the payment of the sum of £—— as and for liquidated damages, in case the said [C. D.] shall at any time thereafter, either alone or in partnership, carry on or be engaged in, directly or indirectly, the business of a surgeon or apothecary, or any branch thereof, or otherwise practise either surgery or medicine in —— aforesaid, or within —— miles from the Town Hall thereof.

Arbitration clause.

25. [*Arbitration clause, ut ante*, p. 378.]

In witness, &c.

VI. *ARTICLES OF PARTNERSHIP between a* Patentee *and a* person *who* contributes *the* Capital; Option *for* Executors *of* Deceased Partner *to* succeed *to his* Share; Proviso *that (subject to such option) the* Continuing *or* Surviving Partner *shall purchase the* Share *of a* Retiring *or* Deceased Partner.

Parties.

THIS INDENTURE (*h*), made, &c., Between [A. B.]. of, &c., of the one part; and [C. D.], of, &c., of the other part: Whereas a patent under the seal of the Patent Office, dated the —— day of this present month of ——, for the manufacture of a certain machine, invented by the said [A. B.], intituled ["——"], has been granted to him for the term of fourteen years from the date

Recital of letters patent.

Stamp

(*h*) Stamp, 10*s*.

VI. Articles of Partnership between Patentee and Another.

thereof: And whereas the said [A. B.] and [C. D.] have agreed to become partners for the purposes, and subject to the covenants and provisions hereinafter contained: And whereas the said [A. B.] and [C. D.] have defrayed the expenses of obtaining the said patent in equal moieties: NOW THIS INDENTURE WITNESSETH, that each of them the said [A. B.] and [C. D.] hereby covenants with the other of them in manner following (namely):—

Of agreement to become partners.

Testatum.

Mutual covenants.

1. The said [A. B.] and [C. D.] shall be partners in the business of manufacturing and selling the said machines pursuant to the said patent, for the said term of —— years, granted by the said letters patent, and for any further term for which the said patent may be extended.

Business and duration of partnership.

2. The partnership business shall be carried on under the firm of [B. and D.], at —— aforesaid, or at such other place or places as the said partners shall mutually agree upon.

Firm and place of business.

3. The patent right shall be considered as part of the partnership property, and to have been brought into the business as capital by the said [A. B.]; and no share or interest therein, or license to use the same, shall be sold, granted, or assigned to any person or persons, without the consent of both the partners: and all moneys, benefits, and advantages to accrue from any such sale, grant, assignment, or license, shall be divisible between the partners in the same proportions as the profits of the business are hereinafter directed to be divided. The said patent right shall for the purposes of the business, and of any accounts in relation thereto, be taken to be of the value of £—— at the date of these presents and to become depreciated in value at the rate of £—— every half year.

Patent to be property of partnership.

4. The said [C. D.] shall immediately bring into the business the sum of £—— as capital, and shall continue to employ the same in the said business, and for the benefit of the partnership, during the partnership term, without any allowance of interest for the same; and shall, from time to time, at the request of the said [A. B.], advance and bring into the said business such further sum and sums of money (not exceeding the sum of £—— in any one year, nor exceeding, together with the said sum of £——, the total sum of £——), as shall in the opinion of the said [A. B.] be required for carrying on the same business, being allowed interest on such further

Capital to be advanced by one of the partners.

VI. Articles of Partnership between Patentee and Another.

advances after the rate of —— per centum per annum out of the profits of the said business, before any division of such profits.

5. The said [C. D.] shall not withdraw the said capital, or sum of £——, or any such further advances as aforesaid, or any part thereof respectively, without the consent in writing of the said [A. B.] first obtained for that purpose.

Division of profits and losses (*i*).

6. The net profits of the said partnership (after paying thereout the several outgoings and expenses mentioned in Clause 11 hereof, and after deducting the interest hereinbefore agreed to be allowed to the said [C. D.] on his further advances of capital), shall, during the first seven years of the

During first seven years.

said term of —— years, be divided into three equal shares, whereof two shall belong to and be taken by the said [A. B.],

Remainder of term.

and the other by the said [C. D.]; and shall, during the remainder of the said term, be divided between the said parties

Losses to be borne in moieties.

in equal moieties. But all losses, at any time incurred in or about the carrying on of the partnership business, shall be borne by the partners in equal shares.

Bankers, &c.

7. [*Clause as to bankers and drawing on the partnership account, ut ante*, p. 382.]

Monthly drawings.

8. [*Clause as to monthly drawings, ut ante*, p. 382.]

Apprentices, &c.

9. [*Clause as to taking and engaging apprentices and servants, &c., ut ante*, p. 383.]

Apprentice-fees.

10. [*Clause as to apprentice-fees, ut ante*, p. 383.]

Payment of outgoings.

11. The rent of any workshops, buildings, or lands where the said business shall be carried on, and the costs of all additions to and alterations and repairs of the same, and of purchasing and keeping up all machinery, utensils, and plant which may be necessary or proper for carrying on the said

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(*i*) The following may be substituted for Article 6 :—

6A. The net profits, &c., shall be divided between and taken by and the losses at any time incurred in or about carrying on the partnership business shall be borne by the said [A. B.] and [C. D.] in the proportions to which they shall for the time being be entitled to the capital brought in by them respectively, having regard to the estimated present value and half-yearly depreciation of the said patent right but exclusive of any further advances to be made by the said [C. D.] under the fourth Article hereof.

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business, and all taxes, rates, assessments, insurance premiums and other outgoings payable in respect of the premises or of the said business, and the salaries and wages of clerks, workmen and servants, and the expenses of travelling of the partners or their agents on account of the partnership, shall be paid out of the profits of the business, or in case of a deficiency of profits then by the partners in equal shares.

As to attention to business.

12. The said [A. B.] shall at all times, during the continuance of the partnership, diligently and faithfully employ himself in the conduct and management of the said business, and in the concerns of the partnership, unless he shall be prevented by sickness or other reasonable cause of excuse arising without his own default; but the said [C. D.] shall not be obliged to attend to the said business, except so far as he shall think proper so to do.

13. [*Here insert from the preceding precedents, any clause or clauses which may be required, with regard to the duties of the partners, and the conduct and management of the business.*]

As to trade secrets.

14. Neither partner shall, during the continuance of the partnership, nor for —— years after its determination by any means, without the consent in writing of the other of them, or of his executors or administrators, divulge to any person not a member of the firm any trade secret, method of manufacture, or special information, employed in or conducive to the partnership business, and which may come to his knowledge in the course of, or by reason of this partnership.

15. [*Expulsion Clause, ut ante*, p. 379.]

Option for executors of [C. D.] to succeed to his share on his death.

16. If the said [C. D.] shall die during the continuance of the partnership, his executors or administrators shall have the option of succeeding to his share in the partnership business and effects, upon giving notice of such intention, within —— calendar months after his death, provided they shall forthwith do and execute all such acts and deeds as shall be requisite to subject them to the same liabilities and conditions as the deceased was subject to in respect or by reason of the partnership; But, in such case, the said [A. B.] shall alone conduct and manage the said business, and the said executors or administrators shall not be at liberty to intermeddle or interfere in the conduct and management of the partnership concerns, unless expressly requested so to do by the said [A. B.], otherwise than by inspecting the books of account

VI. Articles of Partnership between Patentee and Another.

belonging to the partnership, and examining into the state of the business, or by assisting in making up and settling the half-yearly general accounts in manner hereinbefore directed; PROVIDED ALWAYS, that so long as the said [A. B.] shall conduct and manage the said business on behalf and for the benefit of himself and the executors or administrators of the deceased partner, he shall be entitled to deduct and retain out of the profits of the business, before any division thereof, the yearly sum of £——, by equal quarterly payments, as a compensation or salary for his trouble in conducting and managing the same (*k*).

Executors carrying on testator's business.

(*k*) The situation of an executor in trust carrying on his testator's trade, either solely or in conjunction with surviving partners, is one of great disadvantage. His own property is liable to third parties in respect of the engagements of the business, while the profits belong to the *cestui que trust;* and the executor is not even allowed a compensation for his trouble: he may, indeed, if it be necessary to continue a trade, employ a person to conduct it, and his remuneration to such person would be allowed; but if the executor carries on the business himself, he cannot claim any allowance, it being impossible to distinguish this from the other duties inseparable from his character, such as collecting debts, &c., for which he is clearly not entitled to any compensation: *Burden* v. *Burden*, 1 Ves. & B. 170. An executor, therefore, having no beneficial interest, incurs hazard without profit: *Ex parte Richardson*, Buck, 209; *Cutbush* v. *Cutbush*, 1 Beav. 187; *Wedderburn* v. *Wedderburn*, 4 My. & C. 41; *Wightman* v. *Townroe*, 1 Mau. & S. 412; see also, as to liability of executors for acceptance or indorsement of bills of exchange and promissory notes, *Liverpool Borough Bank* v. *Walker*, 2 D. G. & J. 24; *Lucas* v. *Williams*, 3 Giff. 150. In *Holme* v. *Hammond*, L. R. 7 Ex. 218, certain persons agreed to become partners for seven years; they were to contribute capital and share profits and losses in equal shares; and if any partner died during the seven years, the surviving partners were to continue the business and to pay to the representatives of the deceased partner the same share of profits as such partner would have been entitled to had he lived. One of the partners having died during the term, the business was continued by the survivors. It appeared that C. and D. were executors of the deceased partner and from time to time received payments on account of profits; but they did not interfere in the management of the trade, nor did their names appear in it. An action was brought against the executors in respect of a contract entered into by the firm after the death of the deceased partner. It was held that the executors were not liable according to the principles laid down in *Cox* v. *Hickman*, 8 H. L. C. 268.

The observations just made in regard to an executor in trust, of course are equally applicable to an administrator who carries on the intestate's trade.

17. In case either of the said partners shall retire from the said partnership, pursuant to the fifteenth article hereof, or

VI. Articles of Partnership between Patentee and Another.

An executor, who has rendered himself personally liable by carrying on the partnership business, will be entitled to an indemnity out of the estate of the deceased partner, if he has been acting under the authority of the deceased partner expressed in his will, or by the directions of the persons beneficially interested in his estate, but not otherwise. Where the testator has limited the amount of his assets to be employed in the trade, his estate is not liable beyond that amount: *Thompson* v. *Andrews*, 1 My. & K. 116; *Cutbush* v. *Cutbush*, 1 Beav. 184. If the executor do not go beyond his authority, and the concern becomes bankrupt, then the assets employed by him in the trade can never be proved, because they are a part of the capital of the trade, and liable to pay its debts; but, on the other hand, if in breach of his trust he makes use of the assets to an extent not authorized by the will, the excess so employed may be proved as a debt, just as if the excess had been part of the assets of another estate: *Ex parte Garland*, 10 Ves. 110; *Ex parte Richardson*, Buck, 202; *Scott* v. *Izon*, 34 Beav. 434.

In case of dissolution by

Liability of testator's assets where executor carries on trade.

A general direction in a will that a testator's business shall be carried on does not of itself authorise the executors to employ additional capital beyond the amount employed at the time of the testator's death for the purposes of the business: *M'Neillie* v. *Acton*, 4 De G. M. & G. 744. A direction that money shall be *left in* the business in which the testator was engaged, will not authorise the executors to trade with the money, but only to continue the money in the business as a loan: *Travis* v. *Milne*, 9 Ha. 141.

Though an executor cannot carry on his testator's business without authority, he will be justified in keeping a trading or manufacturing establishment on foot merely for the purpose of completing orders given in the testator's lifetime, or of disposing of the stock and goodwill to advantage: *Garrett* v. *Noble*, 6 Sim. 504. See *Marshall* v. *Broadhurst*, 1 Cr. & J. 405; *Dakin* v. *Cope*, 2 Russ. 170; *Edwards* v. *Grace*, 2 M. & W. 190.

Authority of executor to carry on trade.

If it is intended that the executors or administrators of the deceased partner shall receive an allowance out of the profits for their trouble, and further, that such an allowance shall belong to them beneficially, the following clause may be added:—

"Provided nevertheless, and it is hereby declared, that in case the executor or administrator, or executors or administrators, of the said [C. D.] so dying as aforesaid, shall take an active part in the management of the said partnership business (being requested so to do by the said [A. B.]), he or they shall be allowed to deduct or retain the like annual sum of £—— as a compensation for his or their trouble in assisting in the management thereof, which sum shall be received by him or them for his or their own use and benefit."

Allowance to executor for trouble of management.

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death or notice, surviving or continuing partner shall purchase share at a valuation.

in case either of the said partners shall die during the continuance of the said partnership, and in case the partner so dying shall be the said [C. D.], then, if his executors or administrators shall decline or neglect to avail themselves of the option given to them by the article lastly hereinbefore contained, then the continuing or surviving partner (as the case may be) shall, within the space of —— calendar months next thereafter, settle and adjust with the retiring partner, or the representatives of the deceased partner (as the case may be), all accounts, matters, and things relating to the partnership; and the amount of the share of the retiring or deceased partner (as the case may be) in the credits and effects of the partnership, shall be ascertained by valuation to be made by two indifferent persons, one to be nominated by the continuing or surviving partner, and the other by the retiring partner, or the executors or administrators of the deceased partner (as the case may be), with power to choose an umpire in case of their not agreeing in their opinion; And thereupon it shall be obligatory upon the surviving or continuing partner to purchase, and he shall accordingly purchase the said share at the price or value to be ascertained as aforesaid, and enter into any bond or bonds in a sufficient penalty or penalties for securing to the retiring partner, or the representatives of the deceased partner (as the case may be), the amount of the price or value of such share, by equal instalments, with interest at the rate of —— per centum per annum, at the respective periods of six, twelve, and eighteen calendar months next after either of the said partners shall retire or die as aforesaid; and also a bond or bonds for indemnifying the estate and effects of the retiring or deceased partner (as the case may be) against the debts and demands due or owing by or from the said partnership, on having a proper assignment or assurance, or assignments or assurances, executed for vesting in the continuing or surviving partner (as the case may be), all credits and effects due, owing, and belonging to the partnership (*l*),

(*l*) This clause is distinguishable from that given, *ante*, p. 414, where the surviving partner had an *option* to purchase the share: here it is *imperative* on him. Such clauses are often framed in terms which render it doubtful whether the one or the other is intended. It is not usual, nor in general does it seem advisable, to *oblige* the surviving partner to purchase: but if such be the intention, it should be unequivocally expressed.

and enabling such continuing or surviving partner to collect and get in the same.

IN WITNESS, &c.

VI. Articles of Partnership between Patentee and Another.

VII. *DEED OF PARTNERSHIP between* COAL MERCHANTS; SPECIAL PROVISIONS, *as to* CONTRIBUTION *of* CAPITAL: *that one of the Partners may become a* DORMANT PARTNER; *that* EITHER PARTNER *may* SELL *his* SHARE *subject to* PREEMPTION *by his* CO-PARTNER; *and that in case of the* DEATH *of* EITHER PARTNER, *the* SURVIVOR CARRYING *on the* BUSINESS *shall* ALLOW *the* REPRESENTATIVES *of the* DECEASED PARTNER *an* ANNUAL SUM *in* LIEU *of* PROFITS.

THIS INDENTURE (*m*), made the —— day of ——, 18—, BETWEEN [A.], of ——, London, coal merchant, of the one part; and [B.], of ——, in London, coal merchant, of the other part: WITNESSETH, that each of them the said [A.] and [B.], so far as the covenants and agreements hereinafter contained and to be observed and performed by him, his executors, and administrators, hereby covenants with the other of them, in manner following, that is to say:—

Parties.

Testatum.

1. THE said [A.] and [B.] shall be partners in the trade or business of coal merchants for the term of ten years from the —— day of —— next ensuing.

Commencement and duration of partnership.

2. THE trade or business of the partnership shall be carried on at ——, London, or at such other place or places as the said partners may agree upon.

Place of business.

3. THE firm of the partnership shall be [A. & B.].

Style of firm.

4. THE capital of the partnership shall be the sum of £——, which shall on no account or pretence whatsoever be diminished (except by mutual consent), and shall be made up and brought into the partnership at the time and in the manner hereinafter mentioned (that is to say): The sum of £——, part thereof, to be brought in by the said [A.] as and when the same may be necessary for the business of the

Capital.

(*m*) Stamp, 10*s*.

VII. Articles of Partnership between Coal Merchants.

partnership, and the sum of £——, the residue thereof, to be brought in by the said [B.] in manner following (that is to say): The sum of £——, part thereof, in money on the —— day of —— next, and the three vessels, respectively called "the Hope," "the Good Intent," and "the Perseverance," belonging to the said [B.], which it is agreed shall become the property of the partnership, and are to be brought in by the said [B.] as farther part of his advance of capital, at the sum at which the same shall be valued by two arbitrators or their umpire, to be appointed in manner hereinafter provided for appointment of arbitrators and their umpire; and if the sum at which the said vessels shall be valued shall exceed £——, the surplus shall be paid out of the capital of the said business to the said [B.]; and if such sum shall not amount to the sum of £——, the residue of the said £—— shall be brought in by the said [B] on or before the —— day of —— next.

Certain vessels belonging to [B.] to be valued, and the value considered as part of his advance of capital.

Shares of the respective partners in the capital and profits.

5. The said capital shall be employed in the business of the partnership, and the partners shall be entitled to the said capital, in the proportions in which the same shall, for the time being, have been brought in by them as aforesaid, and shall be entitled to the net profits of the business, in the shares following (that is to say): The said [A.] to seven equal eleventh parts thereof, and the said [B.] to the remaining or other four equal eleventh parts thereof.

Expenses and losses, how to be borne.

The rent of the offices where the business of the partnership shall be carried on, and all repairs and taxes, the salaries of all clerks, servants, and all other necessary expenses which shall be incurred in the business of the partnership, and all debts to become due on account of the same, and all losses which may happen in the said business, and interest on all monies to be hereafter borrowed by the partnership, and on the shares of the partners respectively in the said capital, after the rate of —— per centum per annum (which is hereby agreed to be allowed to them respectively), shall be paid out of the profits of the partnership, or, in case the same shall be deficient, then by the said [A.] and [B.], their respective executors or administrators, in the shares following (that is to say): Seven equal eleventh parts thereof by the said [A.], his executors or administrators, and the other four equal eleventh parts thereof by the said [B.], his executors or administrators.

Monthly allowance to partners.

6. From the commencement of the partnership, it shall be lawful for each of the said partners respectively to receive out

VII. Articles of Partnership between Coal Merchants.

of the net profits of the business, by monthly payments, on the last day of each calendar month, by way of subsistence money, the sums following (that is to say): the said [A.], the sum of £——, and the said [B.] the sum of £——, and the said sums respectively, at the times of taking out the same, shall be entered in the cash-book belonging to the partnership, and carried to the debit of the respective accounts of the said partners, in part of their shares of the profits of the business.

Interest to be allowed on further advance of capital.

7. If either of the said partners, with the consent of the other of them, shall bring into the business any sum or sums of money, over and above his respective share of the said capital of £——, the same shall be entered in the cash-book of the partnership, as a debt due therefrom to the partner lending the same, and shall be a charge upon the partnership estate, and carry interest after the rate of —— per centum per annum, which shall be paid by half-yearly payments; and if the party lending any such money shall neglect to take back the same, upon receiving three calendar months' previous notice in writing from the other partner, interest thereon shall cease from the expiration of such notice.

No apprentices to be taken, &c., without consent of both partners.

8. Neither of them the said [A.] and [B.] shall take any apprentice, or hire or keep or, except in case of gross misconduct, dismiss any clerk or servant in the business of the said partnership, against the consent of the other of them, except that either partner shall be at liberty to introduce a son into the office of the said partnership, who shall have attained the age of fifteen years, but no salary shall be allowed to such son without the consent of the other partner.

One partner to devote his whole time, the other not.

9. The said [B.] shall, at all times during the continuance of the said partnership, diligently employ himself in and about the business thereof, and carry on and manage the same for its greatest benefit and advantage; but the said [A.] shall not be obliged to attend to the business any farther or otherwise than he shall think proper. Provided always that if the said [A.] shall altogether cease to attend to the business, then and thenceforth he shall not without the consent of the said [B.] interfere with the conduct or management of the business, which shall thenceforth be conducted and managed by the said [B.] alone, nor be entitled to sign the name of the firm for any purpose, but the said [A.] shall be in the position of a dormant partner in the firm; and in that case he shall thenceforth be entitled only to five equal eleventh parts of the

VII. Articles of Partnership between Coal Merchants.

net profits of the business, and the remaining two equal eleventh parts thereof, to which he would otherwise have been entitled, shall belong to and be taken by the said [B.], so long as he shall alone conduct and manage the business (*n*). But the said [A.] shall nevertheless be entitled to capital and liable in respect of expenses and losses as if he had not altogether ceased to attend to the business.

Each to be faithful, &c.

10. EACH of them the said [A.] and [B.] shall be faithful to the other of them in all transactions relating to the said partnership, and give a true account of the same, and of all letters and things which may come to his hands or knowledge concerning the said partnership, to the other respectively, as often as the same shall be required.

Neither party to engage in any other trade, except that [A.] may retain shares of ships.

11. NEITHER of them the said [A.] and [B.] shall, directly or indirectly, engage in any other than the business of the said partnership, without the consent in writing of the other of them; it being understood, nevertheless, that the said [A.] may retain any shares or parts of ships he at present holds.

Neither to employ partnership monies except for joint purposes.

12. NEITHER of them the said [A.] and [B.] shall, without the consent of the other of them, employ any of the monies or effects of the said partnership, or engage the credit thereof, except upon the account of the business of the said partnership.

Not to lend any money, &c., to any person forbidden to be trusted by the other.

13. NEITHER of them the said [A.] and [B.] shall lend any money, or deliver upon credit any coals or goods belonging to the said partnership, to any person or persons whom the other of them shall have previously forbidden him, by notice in writing, to trust.

Not to engage in any contract respecting articles, except coals, beyond a certain value.

14. NEITHER of them the said [A.] and [B.] shall buy or engage in any contract respecting any articles, except coals, exceeding the value of —— hundred pounds, without the consent of the other of them.

15. NEITHER of them the said [A.] and [B.] shall, without

(*n*) If there are more than two partners this clause may be varied as follows :—

"The remaining —— equal —— parts thereof to which he would otherwise have been entitled shall belong to and be taken by the other partners or partner in proportion to their respective original shares in the net profits of the business so long as they shall continue to attend and the said [A.] shall continue not to attend to the business."

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the consent of the other of them in writing first had and obtained, enter into any bond, or become bound as bail, surety, or security, or subscribe any policy of assurance (except on cargoes addressed to the said partnership), or accept any bill in the name of the said firm except for the purposes of the said trade.

Not to suffer partnership property to be taken in execution.

16. Neither of them the said [A.] and [B.] shall do or suffer any act or thing, whereby the stock or effects of the said partnership, or his share or interest therein, may be taken in execution.

To pay their respective debts.

17. Each of them the said [A.] and [B.] shall punctually discharge the debts now owing, or hereafter to be due from him, and indemnify the other of them, his heirs, executors, and administrators, and the stock and effects of the said partnership, from all his private debts and engagements, and all actions, suits, damages, and expenses, on account thereof.

Power for either partner to sell his share subject to pre-emption by co-partner.

18. Either of them the said [A.] and [B.], and, as to the said [A.] either before or after he shall have altogether ceased to attend to the business as aforesaid, who shall at any time wish to sell his share and interest in the partnership business, shall in the first place offer the same at such a price as he shall think fit to the other of them; and if such other partner shall for the space of —— weeks after such offer accept or neglect to accept the same, then the partner making such offer shall be at liberty to sell and assign his said share and interest to such other person as he shall with the consent of his co-partner think proper, such consent not to be withheld capriciously; and thereupon the purchaser shall be admitted into the firm with the same rights and liabilities in all respects as if he had been originally a partner holding the share and interest so sold and assigned.

Books, &c., to be kept at counting-house, to which each party is to have free access.

19. Proper books of account shall be kept by the partners, in which all transactions relating to the said partnership business shall be duly entered, and such books, together with all bills, letters, and other writings, which shall from time to time concern the said partnership business, shall be kept at the counting-house of the said partnership; and each of the said partners shall have free access to examine and copy out, or take extracts from, the cash-book, and all other the books of the partnership at all reasonable times.

Annual account to be taken.

20. On the first day of July next ensuing, and on every succeeding first day of July, during the partnership, a

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general account and rest in writing shall be made of all such business as shall have been transacted by the said partners, and of all their stock, coals, vessels, monies, credits, and effects, and of all such other things as are usually comprehended in annual accounts of the like nature; and a just valuation shall be made of all such particulars included in such account as are susceptible of valuation; and a fair copy of the said general account, or rest, and valuation, shall be entered in two books, and be signed in each of the said books by the said [A.] and [B.] respectively, within two calendar months after the approval of every such account; and, after such signature, each of the said partners shall take one of the said books, and be bound thereby, unless some manifest error, to the amount of £100, shall be found therein, and signified by either of the said parties to the other of them, in which case such error, not being less than £100, shall be rectified; and as soon after the finishing of every such account respectively as the same can conveniently be paid, the gains and profits which shall have arisen by the business of the said partnership during the time to which such accounting shall extend, shall be divided between the said parties in the proportions hereinbefore mentioned, unless either of the said parties shall, with the consent of the other of them, agree to leave such profits, or any part or parts thereof, in the said business at interest at the rate aforesaid.

Final account on dissolution.

21. Within six calendar months after the expiration of the said term of ten years, a full account, in writing, shall be made and settled of all the stock in trade, monies, credits, and effects belonging to, and all the debts due from, the partnership; and thereupon the partners shall forthwith pay, or make due provision for the payment of the debts owing by the partnership; and the balance of the partnership capital and effects, and the profits thereof, or other the matters to be included in such general account, shall be divided between the said [A.] and [B.], their respective executors, administrators, and assigns, in the proportions hereinbefore mentioned; And, after making such division, such instruments in writing shall be executed by the said partners respectively for getting in the credits and effects outstanding, and for indemnifying each other concerning the premises, and for vesting the whole property in the said respective shares of

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and in the said capital and effects in each of the said partners to whom respectively the same shall, upon such division, belong, and for releasing to each other all claims on account of the said partnership as are usual in cases of the like nature; such instruments respectively to be at the expense of the person requiring the same; and if any question shall arise as to the propriety of any instrument, or of any clause or provision therein required by either party, such question shall be referred to some counsel of not less than —— years' standing, and practising in the Chancery Division of the High Court of Justice, to give an opinion therein; and such opinion shall be final and conclusive.

In case of the death of either, the business to be carried on by the survivor.

22. In case either of the partners shall die during the partnership, then if the said [A.] shall be the survivor of them, and shall previously have altogether ceased to attend to the business, he nevertheless may, and, in any other case, the survivor of them shall continue to carry on the said business until the expiration of the said term of ten years, if he shall so long live, under the firm of the partnership.

Certain allowance in lieu of profits to be made to the executors or administrators of the deceased partner.

23. The surviving partner so continuing to carry on the business as aforesaid, shall pay to the executors or administrators of the deceased partner during the remainder of the said term of ten years, if such surviving and continuing partner shall so long live, in lieu of the share of the deceased partner in the profits of the said partnership (exclusive of the interest on his share of the capital thereof), the annuity hereinafter mentioned (that is to say): If the deceased partner shall be the said [A.], an annuity of £700; and if the deceased partner shall be the said [B.], an annuity of £400, the said annuity respectively to be paid by two equal half-yearly payments on the first day of January and the first day of July, in every year; the first payment of the said annuity to be made on such of the said days as shall first happen after the decease of the partner so dying, and to be instead of a half-yearly payment of a proportional part of the profits from the time of the last division of profits of the business of the partnership previously to such decease (*o*).

(*o*) This annuity, being expressly given in lieu of the deceased partner's share of profits, would probably be held to be payable only to the extent of such profits. It may, however, be well, in order to avoid dispute, explicitly to declare this to be the inten-

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Capital of the deceased partner to be left in the trade.

24. If after the death of either of the partners the business shall continue to be carried on as aforesaid, the capital of the deceased partner shall remain in the said partnership until the expiration of the said term of ten years (if the continuing partner shall so long live), and the executors or administrators of the deceased partner shall stand in his place in respect of the same, and be entitled to the interest thereof; but if the said [A.] shall first die, and his executors or administrators shall require the whole or any part of his share of the said capital not exceeding the sum of £——, the same shall be paid out to them at such time or times as they shall require the same, upon giving six calendar months' notice, in writing, to the said [B.]

Executors or administrators of deceased partner may inspect books, but not further to interfere.

25. If after the death of either of the partners the business shall continue to be carried on as aforesaid, the executors or administrators of the partner first dying shall be at liberty to inspect, examine, and copy, and take extracts from the books of the partnership, at all reasonable times, and to introduce any son or sons of the deceased partner, of the age of fifteen years or upwards, into the office of the surviving and continuing partner as a clerk, but shall not otherwise interfere with the business.

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tion of the parties, however improbable may be the event of the deficiency—

"But if the entire profits of the said business to be carried on by the surviving and continuing partner as aforesaid shall in any year or years fall short of the said annuity hereinbefore stipulated to be paid to the executors or administrators of the deceased partner, then such executors or administrators shall be entitled, for the year or years in which such deficiency shall arise, to a sum equal to the amount of such profits only in lieu and satisfaction of the said annuity."

And add, if so intended—

"Provided always, that in case it should happen that the losses of the said trade in any year or years shall have exceeded the profits thereof during such period, the excess of such losses shall be borne by the surviving and continuing partner, exclusively, out of his share of the capital in the partnership, and no part thereof shall be contributed by the representatives of the deceased partner (*or otherwise as the case may be*)."

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26. If after the death of either of the partners the business shall continue to be carried on as aforesaid, then at the expiration of the said term of ten years, or at the death of the said [B.], if the said [A.] shall survive him, and having previously altogether ceased to attend to the business, shall not elect to continue to carry on the business, or at the death of the surviving and continuing partner, which shall first happen, all such accounts, division, acts, deeds, and things, shall be taken, made, done, and executed between the surviving and continuing partner and the executors or administrators of the deceased partner, or their respective executors or administrators, as are hereinbefore agreed to be taken, made, done, and executed, at the expiration of the partnership, by the partners, if both of them shall be living, or as near thereto as circumstances will permit.

Arrangements to be made at the end of the term.

27. Subject as is hereinbefore otherwise expressly provided, &c. [*continue ut ante*, p. 378].

Arbitration clause.

VIII. *DEED OF PARTNERSHIP between two* Brewers *on* admission *of one of them to a Share in an Established Business*; Special provisions *defining the* rights *and* duties *of the respective* partners. *One Partner to* attend *to the* Business, *the other need not: one may* assign, *the other not. On the* determination *of the* Partnership, *the* Senior Partner, *or his* Representatives, *may* purchase *the other's Share.* Special provisions *as to* valuation *and* realisation *of* assets. Provision *for* Widow *and* Children *of deceased* Partner.

THIS INDENTURE (*p*), made the —— day of ——, 18—, Between [A. B.], of, &c., brewer, of the one part; and [C. D.], of, &c., brewer, of the other part. Whereas the said [A. B.] is seised of, or otherwise entitled for an estate in

Parties.

(*p*) Stamp, *ad valorem* as a conveyance by way of sale in respect of the price of the share of property purchased, other than the freeholds and leaseholds, and additional stamp of 10*s*.

Stamp.

The conveyance or conveyances of the freeholds and leaseholds will bear stamps for the *ad valorem* duty on the apportioned value of the share purchased by the incoming partner.

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fee simple in possession free from incumbrances to —— several public-houses and hereditaments thereto belonging and held therewith respectively, subject to the subsisting leases thereof. AND WHEREAS by an indenture of lease, dated the —— day of ——, 18—, and made between [R.] (mortgagee of the hereditaments therein demised), of the first part; [S.] (owner of the equity of redemption of the said premises, subject to the mortgage), of the second part; and [T.], of the third part; ALL THAT brewery and, &c. [*describe parcels*], were demised unto the said [T.], his executors, administrators, and assigns, from the —— day of —— then last passed, for the term of —— years, at the yearly rent of £——, payable as therein mentioned: AND WHEREAS by divers mesne assignments, and other assurances in the law, the said premises comprised in the said lease, are now vested in the said [A. B.], for the unexpired residue of the said term, subject to the said yearly rent of £——: AND WHEREAS [*Recite lease of adjoining premises to* [*A. B.*]]: AND WHEREAS the said freehold and leasehold premises have recently been valued, and are estimated to be of the value of £—— (*q*): AND WHEREAS the said [A. B.] has for many years past carried on the trade or business of a brewer in and upon the said brewery and adjoining leasehold premises: and has agreed with the said [C. D.] to admit the said [C. D.]

Recitals:

f title to freehold public-houses;

of lease of brewery, and business premises;

valuation f freehold nd leasehold premises;

of agreement to admit [C. D.] as partner into the business;

(*q*) Or, the first recitals may be as follows:—

Recital of title to freehold and leasehold property subject to incumbrances by reference to schedules.

"WHEREAS the said [A. B.] is seised of, or otherwise entitled in fee simple in possession, to the several freehold messuages and hereditaments particularly described in the First Schedule hereunder written, and is also entitled to the several leasehold messuages and hereditaments particularly described in the Second Schedule hereunder written, for the terms and at the rents respectively mentioned in the last-mentioned Schedule, all which freehold and leasehold premises have been recently valued, and are estimated to be of the value of £——, without any deduction in respect of the mortgages affecting the same respectively hereinafter mentioned or referred to: AND WHEREAS the mortgages affecting the said freehold and leasehold respectively are particularly specified in the Third Schedule hereunder written, being for securing the several principal sums specified in the last-mentioned Schedule respectively and amounting in the aggregate to the sum of £—— and the interest thereon respectively."

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into partnership with him the said [A. B.] in the said business, to the extent of one equal sixth share therein, in manner and upon the terms hereinafter appearing: AND WHEREAS an inventory and valuation has recently been made of the brewery-plant, utensils, and stock in trade of the said [A. B.] in the business so carried on by him as aforesaid, and an estimate and valuation has also been made of the book-debts and credits owing to him in the same business, and according to such valuation it appears that the value of the said plant, utensils, and stock in trade amounts to the sum of £——, and that the value of the said book-debts and credits (after allowing for bad or doubtful debts) amounts to the sum of £——: AND WHEREAS the debts and liabilities of the said [A. B.] in respect of his said business, are estimated to amount to £——, [exclusive of sums so secured by mortgage as aforesaid]: AND WHEREAS the said valuations, inventories, and estimates of the said freehold and leasehold premises, effects, credits, and liabilities have been entered in two books signed by the said [A. B.] and [C. D.] respectively, and one of such books has been taken and is to be retained by each of them the said [A. B.] and [C. D.]: AND WHEREAS it accordingly appears that the net value of the property and assets of the said [A. B.] in respect of his said business, exclusive of the value of the said freehold and leasehold premises, after deducting the total debts and liabilities of the said [A. B.] in respect thereof, amounts to £——, which sum it is hereby agreed shall be taken actually to represent and be such net value. AND WHEREAS in consideration of the sum of £——, being the estimated value of one-sixth share therein paid by the said [C. D.] to the said [A. B.], the said freehold and leasehold premises hereinbefore mentioned (*r*), have been duly conveyed and assigned according to the tenure thereof respectively, by several indentures bearing even date with these presents, so as to vest the same respectively (*s*), as to five equal sixth parts thereof in the said [A. B.], his heirs, executors, administrators, and assigns, and as to the remaining one equal sixth

of valuation of plant, &c., of business;

of amount of liabilities;

of entry of valuations, &c., in books signed by the partners;

of net value of business property and assets;

of conveyance of freeholds and leaseholds.

(*r*) Or, if the recital given at p. 432, note (*g*), is adopted, say, "described in the first and second Schedules hereunder written respectively."

(*s*) Add, if necessary, "subject to the several mortgages affecting the same premises respectively as aforesaid."

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part thereof respectively, in the said [C. D.], his heirs, executors, administrators, and assigns: And whereas it has been agreed that the said [C. D.] shall purchase one equal ——th share of, and in the goodwill, property, and assets of the said business, other than the said freehold and leasehold premises, at the price of £——, being one equal sixth part of the estimated net value thereof: And that such price shall be paid by the said [C. D.] by four equal instalments, the first of such instalments to be paid upon the execution of these presents, and the remaining three instalments at intervals of ——, ——, and —— calendar months thereafter: And whereas the said [C. D.] has accordingly now paid to the said [A. B.] the sum of £——, being the first of such instalments, as the said [A. B.] hereby acknowledges, and has secured the payment of the remaining three instalments to the satisfaction of the said [A. B.] (as he also hereby acknowledges), by a bond under the hand and seal of the said [C. D.], bearing even date with these presents, whereby the said [C. D.] has become bound to the said [A. B.] in the penal sum of £——, with a condition for making void the same, on payment by the said [C. D.], his heirs, executors, or administrators, of the remainder of the said price at the times and in manner therein mentioned.

of agreement for purchase of share at a price payable by instalments;

of payment of part of purchase-money, and securing of remainder by bond;

Testatum, Mutual covenants.

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, each of them the said [A. B.] and [C. D.] (so far as the covenants, stipulations, and provisions hereinafter contained are to be observed and performed by him, his executors and administrators), hereby covenants with the other of them in manner following, that is to say:—

To carry on the business of a brewer in partnership for —— years.

1. The parties hereto shall become and continue partners in the trade or business of a brewer, for the term of —— years, from the day of the date of these presents, if they the said parties hereto shall so long live, determinable, nevertheless, as hereinafter mentioned.

As to firm and place of business.

2. The said business and all things relating thereto, shall be managed, and carried on under the style or firm of "[B.] and [D]," in and upon the said brewery, and leasehold premises, wherein the said [A.] has hitherto carried on the business of a brewer, in ——; or in such other place or places as the partners shall hereafter from time to time during the partnership, agree upon for that purpose.

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3. The capital of the partnership shall be deemed to be the sum of £—— (being the estimated net value of the property and assets of the business as hereinbefore is mentioned), and that five equal sixth parts or shares of and in the said capital, amounting to the sum of £——, shall belong to the said [A. B.], and the remaining one equal sixth part or share thereof, amounting to the sum of £——, shall belong to the said [C. D.]. Neither partner shall bring into the business any additional capital without the consent of the other partner. Capital.

4. Either partner may from time to time, with the consent of the other partner, advance any sum or sums of money to the firm by way of loan; and every such advance shall bear interest at the rate of £—— per cent. per annum, as from the time of making the advance, until repayment thereof, and may be withdrawn at any time at —— months' notice. Advances.

5. The profits which shall be made in the business, and all losses attending the same (except such as are hereinafter mentioned), shall be divided between and borne by the said parties hereto in proportion to their respective shares in the capital of the partnership: Provided always that all losses which shall be occasioned by the wilful breach of any covenant, stipulation, or provision herein contained, or other neglect or default on the part of either of the partners, shall be made good by the partner through whose breach, neglect, or default the same shall arise. Profits and losses.

6. All rents, rates, taxes, and repairs (except as hereinafter otherwise provided), and other outgoings, including all premiums of insurance against fire, payable on account of the premises wherein the partnership business shall for the time being be carried on, and the salaries and wages of all clerks, travellers, servants, and workmen employed in the said business, and all charges and expenses attending the same, shall be borne and paid out of the profits thereof, or in case of a deficiency in such profits, then by the partners in proportion to their respective shares in the capital of the partnership. Outgoings.

7. The said [C. D.] shall be at liberty, during the continuance of the partnership, to reside in the dwelling-house upon the said premises where the business is to be carried on, without being subject or liable to pay any rent, rates, or taxes in respect thereof [but shall, at his own expense, keep the same [C. D.] to reside in the house rent free,

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during his occupation in tenantable repair]: And the said [C. D.] shall, as such resident partner, be provided, at the expense of the partnership, with all such beer, coals, and candles, as he and his family may use and consume in the said dwelling-house.

and have coals, &c.

[A. B.] to have a particular room therein;

8. The said [A. B.] shall, during the continuance of the partnership, have for his own exclusive use the room over the counting-house of the firm, with free egress and regress thereto and therefrom, without being liable to pay any rent, rates, or taxes in respect thereof; And the said [A. B.] shall be provided, at the expense of the firm, with all such beer, coals, and candles, as he and his family may, during the continuance of the partnership, use and consume in his present or any future dwelling-house: the same to be delivered at such dwelling-house at the expense of the firm, provided the same be within the distance of two miles from the gate of the brew-house and premises in which the said business shall, for the time being, be carried on, but not otherwise.

and to have beer, &c., at copartnership expense.

Neither to withdraw for his private use any joint money except as after mentioned.

9. Neither of the partners shall, during the continuance of this partnership, convert or employ any part of the joint stock or effects thereof, or withdraw out of the business any sum or sums of money for his own use, except the weekly sums hereinafter mentioned, and interest at the rate of —— per centum per annum on his share in the capital of the partnership, as hereinafter is mentioned; but if, contrary to this stipulation, either partner shall appropriate or withdraw, for his separate use, any money, stock, or effects, belonging to the partnership, that he shall pay to the partnership interest for the said stock, effects, or moneys, after the rate of —— per centum per annum, for the time that such money, stock, or effects shall be owing or unreplaced, and the other partner shall be at liberty to deduct the value of such stock or effects so withdrawn, or the amount of the money so owing, with the interest thereon, out of the share of the partner so owing the same, at the next general annual account, to be made in manner hereinafter mentioned.

But if such shall be done, interest to be paid.

Monthly drawings.

10. It shall be lawful for the partners respectively, on the first day of every month, to receive and take out of the business, for their own respective use, the sums of money hereinafter mentioned, that is to say, the said [A. B.] the sum of £——, and the said [C. D.] the sum of £——.

Each to take interest on his

11. It shall be lawful for the partners respectively to receive

and take out of the said joint stock by equal half-yearly payments, on the —— day of ——, and the —— day of ——, in every year during the continuance of the partnership, interest after the rate of £5 for every £100 by the year, on their respective shares in the capital of the partnership.

share of the capital half-yearly.

12. Each of the partners shall be allowed all sums of money which he may expend in treating any of the customers of the partnership, provided the same shall be claimed and brought to account, and entered in the expense or other proper book of the partnership, within seven days next after the expenditure thereof, but not otherwise.

Allowance for treating customers.

13. All mortgages, leases, bonds, bills of exchange, promissory notes, and securities, and all other writings whatsoever, which shall at any time or times hereafter during the continuance of the partnership be made, drawn, endorsed, accepted, or taken for any houses, warehouses, storehouses, vaults, cellars, or other premises, money, debts, or other matter or thing, whatsoever, in anywise concerning the business, shall be made, drawn, endorsed, accepted, and taken in the name of the firm.

All securities to be taken in the firm name.

14. The said [A. B.], if he shall think proper, shall, during the continuance of the partnership, be the cashier thereof.

[A. B.] to be cashier.

15. The cash account of the business shall be settled and balanced once in every week during the continuance of the partnership, and the balance of the cash in hand, on every such weekly settlement, shall be paid in the name of the firm into such bankers as may be mutually agreed on as the partnership bankers; the same, nevertheless, to be drawn out for the purposes of the partnership only by drafts or cheques to be signed by the said [A. B.] in the name of the firm.

Cash to be balanced weekly, and paid into the bankers.

Cheques to be drawn only by [A. B.].

16. [*Partners to be true and faithful, ut ante*, p. 388].

17. [*Partners to give information to each other, ibid*].

18. Each of the partners shall give his best assistance in getting in, as well the debts now owing to the said [A. B.], as all the debts which shall hereafter be owing or belonging to the partnership: Provided always that all such debts now owing to the said [A. B.] in respect of the said business, and entered in the books signed by the said [A. B.] and [C. D.] respectively as aforesaid, and therein specified as bad or doubtful debts as shall be got in, shall be the property of the said [A. B.] alone.

As to getting in debts owing to [A. B.]

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[C. D.] wholly to employ himself, but [A. B.] may decline to do so.

19. The said [C. D.] will at all times, during the continuance of the partnership, devote his whole time and attention in the usual hours of business, and use his utmost endeavours in managing and carrying on the said trade; but the said [A. B.] shall be at liberty at any time during the continuance of the partnership to decline such part of the active management of the business as he may think fit.

To consult each other.

20. Each of the partners will consult and advise with the other of them concerning his purchases, sales, receipts, payments, and dealings in and relating to the business, from time to time, as occasion shall require.

Neither to buy or sell above a certain extent without consent;

nor to give credit after intimation not to do so.

21. Neither of the partners will at any time during the partnership purchase, sell, or deliver, or make any contract for the purchase, sale, or delivery of any goods or effects on account of or belonging to the business above the amount or value of £—— without the consent of the other of them; and neither of them will, during the continuance of the partnership, trust or give credit to any person or persons whomsoever, contrary to any intimation that shall have been before given to him in writing by the other party.

Not to release any debts, &c., or discontinue any action without consent.

22. Neither of the partners shall, during the continuance of the partnership, release any debt or demand due or owing to the partnership, or accept for the same less than shall be really due, the usual abatement and allowance, according to the custom of the said trade, only excepted; nor shall release or discontinue any action or suit to be brought for any such debt or demand, without the consent in either case of the other of them.

23. [*Not to draw, &c., any bill or promissory note except in regular course of business, ut ante*, p. 383].

24. [*Not to become bail or surety for any person, &c., ut ante*, p. 384].

Not to cause partnership property to be taken in execution.

25. Neither partner shall do or knowingly permit anything whereby the moneys or effects of the partnership shall be seized, attached, extended, or taken in execution.

[C. D.] not to engage in other business without consent.

[A. B.] to be at liberty so to do.

26. The said [C. D.] shall not, during the continuance of the partnership, directly or indirectly, carry on or be concerned in the business of a brewer, or any other trade, business, or employment whatsoever, either alone, or together with, or as agent to, any other person or persons, unless with the previous consent in writing of the said [A. B.]; but the said [A. B.] shall be at liberty, during the continuance of the partnership,

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to carry on and be concerned in, upon his own separate account, at any place or places he may think proper, except in —— aforesaid, the business of a brewer, or any other trade, business, or employment which he the said [A. B.] may now be engaged or concerned in, elsewhere than as aforesaid, or which he may, at any time or times hereafter during the continuance of the partnership, be engaged or concerned in, either by himself or together with any other person or persons whatsoever.

Apprentices not to be taken without mutual consent.

27. No apprentice shall be taken by either of the partners without the consent of the other of them; and every apprentice who shall be taken, shall be employed in the business; and every premium which shall be received with any such apprentice shall be brought into the said partnership stock; Provided always, that it shall be lawful for the said [A. B.], at any time during the partnership, to take any one or more of his sons as an apprentice or apprentices to him in the said business of a brewer, without being liable to pay or account to the partnership for any premium in respect thereof.

Apprentice fees to become partnership property. But [A. B.] may take his sons as apprentices without any premium.

Neither to hire, &c., clerks, &c., without consent, except in certain cases.

28. No brewer, clerk, traveller, or servant, shall, during the continuance of a partnership, be hired, or discharged, by either of the partners, without the written consent of the other of them; except that the said [A. B.] shall, from time to time, and at all times during the continuance of a partnership, be at liberty to hire and engage, as principal brewer, principal counting-house clerk, and principal 'broad clerk, such person or persons as he may think fit, and to dismiss any such person or persons, without consulting with, or obtaining the consent of, the said [C. D.] to any such hiring or dismissal: provided that every such brewer, or counting-house or 'broad clerk, so to be hired and engaged as last aforesaid, shall, if required, give security to the said co-partnership for his integrity and fidelity during his service.

29. [*Provision as to keeping proper books of account to be open to the inspection of the partners, ut ante*, p. 384.]

30. [*Provision as to taking a general annual account and valuation to be written in two books, ut ante*, pp. 385, 427.]

First rest.

31. The first of the said general accounts shall be made up, stated, and signed on the —— day of —— next ensuing the day of the date hereof, or within fourteen days next thereafter.

Residue of the profits (after

32. The residue of the net clear profits, which, by every

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such annual account as aforesaid respectively, shall appear to have arisen by reason or on account of the business (after deducting thereout the amount of the said monthly sums to be drawn out by them the partners, and also deducting thereout the amount of any interest on capital so to be drawn out by them half-yearly as aforesaid) shall yearly be divided between the partners, in the proportions hereinbefore mentioned; or the said profits shall be employed and continued for the more advantageously carrying on the said joint trade and partnership in such manner as they the said [A. B.] and [C. D.] may mutually agree on: PROVIDED ALWAYS, that if the partners, or either of them, shall, on such yearly rest and balance being made, determine to draw out from the business such residue of the said profits thereof, the same shall be drawn out by three equal instalments at one, two, and three months from the day of such general account being made, and not sooner.

the weekly sums) to be divided or added to capital as may be agreed on.

Such residue to be drawn out at one, two, and three months.

33. ON the dissolution of the partnership, whether by effluxion of time, or by any notice to be given in pursuance of the proviso hereinafter contained, or within thirty days next after such dissolution, a final general account shall be taken of all the stock in trade, money, goods, and effects then belonging to the partnership, and of all credits and debts then due and owing to and from the same; And, after such account shall be taken, the erections, and buildings, comprised in the inventory and valuation made previously to the commencement of a partnership, as hereinbefore mentioned, and all other erections, and buildings, and all repairs, and improvements to be hereafter made and built in and upon the said several freehold and leasehold premises hereinbefore mentioned, or in or upon any other premises of which the partnership may, at any time hereafter, during the continuance thereof, become possessed; and the goodwill of the business, and the engines, machinery, implements, utensils, goods, wares, horses, drays, effects, or stock, of what nature or kind soever, then employed and used in carrying on the business, shall be valued by two indifferent persons, to be named by the said parties hereto respectively; and the said [A. B.] shall be at liberty, to take on himself the whole of the business; and, in case he the said [A. B.] shall determine so to do, then he shall pay to the said [C. D.], his executors or administrators, one ——th part of the amount of the valua-

On dissolution by effluxion of time or by notice, partners to make a general rest.

A valuation of the new erections, stock, &c., to be made.

[A. B.] to be at liberty to take the whole.

If so, to pay one-sixth of the valuation by instalments

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tion so to be made as aforesaid, by equal instalments, at three, six, nine, and twelve calendar months, and shall give his bond, in a sufficient penalty, for securing the payment thereof, with interest, on each instalment respectively, and after the rate of —— per centum per annum ; But in case the said [C. D.] shall then be indebted to the said [A. B.] on account of the said hereinbefore recited bond, then the said [A. B.] may, in the first place, deduct such debt out of the said ——th part of the amount of such valuation, so to be secured as aforesaid : And upon the execution and delivery of such bond, the said [C. D.] shall, upon the request, and at the cost of the said [A. B.], his heirs, executors, or administrators, execute to him or them such deeds or assurances as shall be requisite, for the purpose of vesting in the said [A. B.], his heirs, executors, or administrators, the share of the said [C. D.], of and in the said property and assets of the partnership.

to [C. D.] with interest, to be secured by [A. B.'s] bond.

Any debt due to [A. B.] to be deducted.

[C. D.] to execute assurances.

34. At the dissolution of the said partnership, in manner last aforesaid, the valuation of the goodwill of the business, and of the beers, ales, malt, hops, and coals then belonging to the partnership, shall be made in manner following ; that is to say ; the goodwill of the said trade shall be estimated after the rate of £—— for every thousand barrels of strong beer, which shall yearly, on an average of the three years then last past, have been brewed on account of the business ; the stock of beer and ales then belonging to the partnership shall be estimated at the then net selling price thereof, making and allowing an abatement or deduction at the rate of £—— for every £100 on the whole amount of the valuation of the said beer and ales ; the stock of malt, hops, and coals then belonging to the said joint trade shall be estimated at the price or prices at which the same respectively were purchased, as such price or prices shall appear by the books of the partnership ; and the valuation of all other the buildings, improvements, engines, machinery, implements, utensils, and stock, of what nature or kind soever, then belonging to the partnership, in regard to the principle or manner of making the same, shall be in the discretion of the persons to be chosen for the purpose of valuing the same as aforesaid.

Good-will to be valued in a prescribed manner.

35. On the dissolution of the partnership, by the means aforesaid, the credits then owing to the partnership shall be collected by the said [A. B.], and applied by him in discharge of the debts thereof, and he shall, if required, give his bond,

Collection of credits of partnership.

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in a reasonable penalty, conditioned for applying the moneys so to be received by him, in the first place in discharge of such debts, and then in payment to the said [C. D.], his executors or administrators, of the share of him the said [C. D.] of and in the said credits.

At expiration of a year, credits to be valued.

36. At the end of one year from the dissolution of the partnership in manner aforesaid, the credits thereof then remaining unreceived by the said [A. B.] as aforesaid, shall be valued by two indifferent persons, to be chosen by the partners respectively; and the said [A. B.] shall pay to the said [C. D.], his executors or administrators, one equal sixth part of the amount of such valuation; and on such payment being made, he the said [C. D.], his heirs, executors, or administrators, shall relinquish all right and claim to any part or share in the said credits, or the produce thereof, and will, upon the request, and at the cost of the said [A. B.], his executors or administrators, by deed or otherwise, effectually assign or release all right, title, interest, claim, and demand whatsoever, therein or thereto, to the said [A. B.], his executors and administrators, and will give him and them full power and authority to sue for, recover, and receive all or any of the said credits, in the name of the said [C. D.], or otherwise, as by the said [A. B.], his executors or administrators, shall be reasonably required; and will not revoke such power or authority, nor receive nor release, or interfere with the receipt or collection of the said credits, or any of them; and thereupon each of them the said [A. B.] and [C. D.], his executors and administrators, shall, if required so to do by the other of them, his executors or administrators, give and execute to the other of them, his executors and administrators, a general release of all claims and demands whatsoever, relating to or in anyways concerning the partnership; and the said [A. B.] shall, at his own cost, give to the said [C. D.], his bond, conditioned to indemnify him, his executors and administrators, against all costs, charges, and expenses, which may happen, or be occasioned, to the said [C. D.], his executors or administrators, by reason of any action or proceeding which may be brought by the said [A. B.] in the name of the said [C. D.], by virtue of the power or authority to be given to him as aforesaid.

On payment to [C. D.] of one-sixth of valuation, he is to assign his interest.

[A. B.] to give bond of indemnity to [C. D.]

Each party to have access to the books for

37. At the dissolution of the partnership in manner aforesaid, all the books of account, papers, and writings belonging

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thereto, shall be placed and left in the counting-house of the partnership, so that each of them the said [A. B.] and [C. D.] may have the use and inspection thereof, and free access thereto, when he shall think fit, thenceforth during the period of one year (at the end whereof the credits then due to the business will be valued and assigned to the said [A. B.] in manner aforesaid); and the said [C. D.], his executors or administrators, will not intermeddle with, receive or release any of the said credits, but will from time to time during the said period of one year, upon the request of the said [A. B.], his executors or administrators, execute and give to him and them sufficient powers and authorities, and concur in all requisite acts, for enabling him to recover and receive the said credits of the partnership.

one year after the dissolution.

During the year [C. D.] to give [A. B.] all necessary powers to collect debts.

38. In case the said [C. D.] shall die at any time during the continuance of the partnership, an estimate and valuation shall, within thirty days next after such death, be made of all the property and effects of the partnership business, in like manner as is hereinbefore directed in case of the dissolution of the partnership by effluxion of time, or in pursuance of a notice to be given for the determination thereof; And the credits due and owing to the partnership shall be collected and received by the said [A. B.] without the interference of the executors or administrators of the said [C. D.]; And the said [A. B.] will pay to the executors or administrators of the said [C. D.] his full share of the amount of such valuation, by four equal instalments, at three, six, nine, and twelve calendar months from the time of such his decease; And also his the said [C. D.'s] share of the produce of all and every the credits then due and owing to the partnership, after full payment and discharge of all the debts owing from the partnership, as and when the same credits shall be received, in like manner as is hereinbefore provided in case of the determination of the partnership by effluxion of time, or in pursuance of a notice to be given for the determination thereof, together with interest for such share of him the said [C. D.] of and in the said joint stock, at and after the rate of —— per centum per annum from the time of his decease as aforesaid; And the said [A. B.] will, within the space of one calendar month next after the decease of him the said [C. D.] (at the costs of the said [A. B.]), execute and deliver to the executors or administrators of the said [C. D.] a bond in a reasonable penalty,

If [C. D.] die, valuation to be made of the new erections, stock, &c.

Credits to be collected by [A. B.].

[A. B.] to pay to the executors or administrators of [C. D.] his share of the amount of the valuation;

with interest on [C. D.'s] proportion, from his death.

[A. B.] to indemnify [C. D.'s] executors from the debts, &c., of

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with a condition for keeping indemnified the executors or administrators of the said [C. D.] from all costs, damages, and expenses arising or to arise from or on account of the partnership, and also for securing the payment of the amount of the net part or share of him the said [C. D.] of and in the said joint stock, according to the valuation thereof, to be made in manner aforesaid, together with such interest as aforesaid, and also for the payment of his the said [C. D.'s] share of the produce of the credits of the partnership, after payment of the debts owing therefrom, in such manner, and at such times, as is hereinbefore appointed for the payment thereof respectively: PROVIDED ALWAYS, that in case, at the time of his decease, the said [C. D.] shall be indebted to the said [A. B.], either on account of the hereinbefore recited bond or otherwise, then the said [A. B.] may deduct such debt out of his the said [C. D.'s] said share in the said joint stock, and the profits and credits thereof, to be secured as aforesaid.

the co-partnership.

[C. D.'s] net share of joint stock to be secured by [A. B.'s] bond;

also of the credits.

In case of the death of [C. D.], [A. B.] to deduct from [C. D.'s] share any debt due to [A. B.].

On execution of the bond, the executors to release all claims to the joint stock, &c.

39. FROM and after the execution of the said bond to be given by the said [A. B.] as aforesaid, the executors or administrators of the said [C. D.] shall not make any claim or demand to any part or share of or in the business, or the produce thereof, or any credits or effects belonging thereunto or arising therefrom; but shall, on the request and at the costs of the said [A. B.], assign and release all right, title, interest, claim, and demand whatsoever therein or thereto to the said [A. B.], his executors, administrators, and assigns; and shall give him and them full power and authority and assistance for and towards the suing for, recovering, and receiving of all or any of the said credits, by permitting their names to be made use of, if necessary, or by such other lawful means as by the said [A. B.], his executors, administrators, or assigns, shall be reasonably required: And the said [A. B.] shall, at his own cost, execute and deliver to the said executors or administrators of the said [C. D.] a bond in a sufficient penalty, conditioned to indemnify them against all costs, damages, and expenses which they may sustain or be put unto by reason of any action or proceeding which may be brought by the said [A. B.] in their names by virtue of the power so to be given to him as aforesaid.

[A. B.] to indemnify executors.

In case [A. B.] declines to purchase [C.

40. IF, upon the determination of the partnership, (whether the same happen by effluxion of time, or by virtue of a notice

to be given for the determination thereof, or by the death of the said [C. D.]), the said [A. B.] shall decline to exercise the option hereinbefore given to him of taking upon himself the whole of the business, and of purchasing the share of the said [C. D.] therein, then they the said [A. B.] and [C. D.], their executors or administrators, will at such determination of the partnership, or within thirty days next thereafter, join in taking a final account of all the joint stock, money, goods, effects, and other things then belonging to the partnership, and of all credits and debts then owing unto and from the same; And after payment and satisfaction, or providing for the payment and satisfaction, of all the debts that shall be then owing by and from the partnership, they the said parties, their executors or administrators, will sell and dispose of all and every the goods, engines, machinery, utensils, stock, and effects, whatsoever, belonging to and used in the business, either by public or private sale, as they the said [A. B.] and [C. D.], their executors or administrators, shall agree on; and will divide between themselves the money arising from the said sale or sales, and all the said credits then remaining due and owing to the partnership, according to their respective shares, regard being had and credit given by either party, his executors and administrators, for any money or claims due or owing by him or them respectively to the partnership: And in case the said [C. D.] shall then stand indebted to the said [A. B.] on account of the said hereinbefore recited bond or otherwise, or to the partnership, or the cash thereof, then he the said [C. D.], his executors or administrators, shall not have liberty to take to himself or themselves the share of him the said [C. D.] of and in the said stock and effects until such debt or debts shall be fully paid.

D.'s] share, a general account to be taken;

and stock in trade to be sold;

and produce divided; Also the credits to be divided.

[A. B.] to deduct out of [C. D.'s] share thereof any debt [C. D.] may owe him.

41. If at any time during the continuance of the partnership the said [A. B.] shall die, his executors or administrators shall be at liberty, if they shall think proper, to take upon themselves the whole of the said business, and to purchase the share of the said [C. D.] therein, or otherwise to dispose of the business, and the stock and effects thereof, in like manner as the said [A. B.] is hereinbefore empowered to do in case the partnership shall cease by effluxion of time, or by any other the means hereinbefore mentioned.

If [A. B.] die, his executors or administrators to have the right of taking the business solely.

42. In case the said [A. B.] shall die at any time during the continuance of the partnership life and his executors or

That [A. B.'s] executors or administrators

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administrators shall take on themselves the whole of the business, and purchase the share of the said [C. D.] by virtue of the agreement hereinbefore contained, then the heirs, executors, or administrators of the said [A. B.] shall at all times thereafter keep indemnified the said [C. D.], his executors and administrators, of, from, and against all costs, charges, damages, and expenses which may arise, happen, or be occasioned to him or them, by reason of any action or suit which shall or may be brought by the executors or administrators of the said [A. B.] in the name of the said [C. D.], in pursuance of any power or authority to them given in that behalf, or by means of any cause, matter, or thing relating to or in anywise concerning the partnership (*t*). [Provided always that such indemnity shall not extend beyond the amount or value of the property and assets of the partnership which shall have come into the hands of the heirs, executors, or administrators of the said [A. B.]].

will indemnify [C. D.] generally.

43. In case the said [C. D.] shall at any time during the continuance of this copartnership assign or dispose of his share of and in the said joint stock and trade, or any part thereof, to any person or persons whomsoever, or otherwise charge or encumber the same, without the previous consent in writing of the said [A. B.], then the said partnership shall from the time of his so assigning, charging, or encumbering the same, stand dissolved and be at an end, in like manner and with the same provisions and arrangements consequent on such dissolution, as if the same had ceased by effluxion of time : But, nevertheless, it shall be lawful for the said [A. B.]

[C. D.] not to assign or charge his share without consent.

If he do so, copartnership to cease as if expired.

But [A. B.] to be at liberty

(*t*) It is not unfrequently provided, that, upon the execution of the deed which is to contain the authority to use the name of the assignor, the assignee shall enter into a bond or covenant of indemnity; and this seems to be rather the more advisable course, because the terms of the instrument can then be adapted to the circumstances of the case ; whereas, if the covenant of indemnity is contained in the articles themselves, and the circumstances under which the assignment is executed are not strictly in accordance with those expressed in the articles, a question might arise whether the covenant is applicable. The reason, however, of introducing the covenant in the articles in the present case is, that as the parties to give the indemnity are trustees, being interested in the character of executors or administrators only, and not beneficially, they might object to enter into such a covenant. It seems, indeed, fair that the covenant should be so framed as not to affect them beyond the extent of the assets which have come to their hands.

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at any time during the continuance of this partnership, at his own freewill, and without the consent of the said [C. D.], to assign and transfer his share in the said joint stock and trade, and the profits thereof, or any part thereof, to any one or more of his the said [A. B.'s] children, or to any other person or persons whomsoever.

to assign his share.

Power for either partner to determine partnership by notice.

44. In case either of them the said [A. B.] and [C. D.] shall at any time after the —— day of ——, 18—, be desirous to put an end to the partnership at any time during the continuance thereof, and of such his desire shall give to the other of them six months' notice at least, in writing, or shall leave the same notice at the counting-house of the partnership, then and in such case this partnership shall, at the expiration of the said period of six months, cease and determine in like manner to all intents and purposes whatsoever as if the same had ended by effluxion of time.

Provision for payment of an annuity to the widow of a deceased partner.

45. If the said [C. D.] shall die at any time during the said term of —— years hereby appointed for the continuance of the partnership, leaving a widow, then (without prejudice to the provision contained in Article 38 hereof with regard to the ascertainment and payment out to his executors or administrators of the value of his share) such widow shall be entitled during her life [and during the remainder of the said term] to an annuity of £—— to accrue from day to day, the first payment in respect of such annuity to be made on the first of the usual quarter-days which shall happen after the day of his death and to be for the period which shall have elapsed since that day, and the annuity to be thereafter payable by equal quarterly payments on the usual quarter-days, and to be charged on the net profits of the business so long as it shall be carried on by the said [A. B.], or his executors or administrators, and either alone or in partnership with any other person or persons; and if the business shall be discontinued during the time hereby appointed for the continuance of the partnership, then the said annuity shall, from and after such discontinuance, be payable by the said [A. B.], or his executors or administrators.

46. *Proviso as to advertisement of dissolution, ut ante*, p. 380.]

47. [*Proviso as to submitting disputes to arbitration, ut ante*, p. 378.]

In witness, &c.

IX. *ARTICLES OF PARTNERSHIP for conducting a Newspaper*; Provisions *as to* Transfer *of* Shares; Appointment *of* Editor; General Meetings.

Parties.

THIS INDENTURE (*u*), made the —— day of ——, 18—, Between [A. B.] of, &c., of the first part; [C. D.] of, &c., of the second part; [E. F.] of, &c., of the third part; and [G. H.] of, &c., of the fourth part: Whereas the copyright and goodwill of the paper called the —— Record, published in ——, on the —— day and —— day in every week, with the printing-presses, types, materials, and the things used in carrying on the same, were up to the —— day of ——, 18—, the sole property of the said [A. B.], and such copyright and goodwill, printing-presses, types, materials, and things are hereafter for convenience referred to as the said newspaper and plant: And whereas such newspaper and plant has for the purposes of convenience been divided into —— shares, distinguished by numbers in regular progression from —— to ——: And whereas the said [C. D.] on the —— day of ——, 18—, agreed to purchase of the said [A. B.] —— shares out of the said —— shares respectively numbered from —— to ——; and whereas the said [E. F.] on the same day agreed to purchase one other such share numbered ——: And whereas the said [G. H.] has recently agreed to purchase of the said [A. B.] other —— shares numbered from —— to ——: And whereas the said [A. B.] has retained for himself, and now holds as his own property, the remaining —— shares of and in the said newspaper and plant numbered from —— to ——: And whereas the said [A. B.] in consideration of the sums of £—— and £—— respectively paid, or secured to be paid to him the said [A. B.] by the said [C. D.] and [E. F.] respectively, and also in consideration of the sum of £—— paid to him the said [A. B.] by the said [G. H.], as the price of the shares so agreed to be purchased by the said [C. D.], [E. F.], and [G. H.] respectively, the receipt of which several sums is hereby acknowledged, has agreed to admit the said [C. D.], [E. F.], and [G. H.] as partners with

Recitals:

of copyright and plant;

of newspaper and plant divided into —— shares;

of purchase of shares;

of agreement to admit as partners.

Stamp.

(*u*) Stamps, *ad valorem*, as on a conveyance, by way of sale, in respect of the price of the purchased shares, and additional stamp of 10*s*.

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him in the said newspaper and plant, upon the terms and conditions herein mentioned; and it is contemplated that other persons may be admitted partners with the said [A. B.], [C. D.], [E. F.], and [G. H.] therein, under the conditions hereinafter contained: NOW THIS INDENTURE WITNESSETH that each of them the said [A. B.], [C. D.], [E. F.], and [G. H.] hereby, so far as the covenants and agreements herein contained are to be performed and observed by him, his executors and administrators, covenants with the others of them jointly and severally, in manner following, that is to say:—

Testatum.

Mutual covenants to perform stipulation, *i.e.*

1. The said [A. B.], [C. D.], [E. F.], and [G. H.], with such assigns of the shares in the partnership hereby created as hereinafter mentioned, shall be partners in the said newspaper and plant, and in printing and publishing the said newspaper at the usual times of publication thereof, and in carrying on and conducting the same; and the same newspaper shall be printed, published, and circulated for their benefit in the shares, and in manner hereinafter mentioned.

Agreement to become partners.

2. The partnership shall be considered with reference to the profits and losses thereof to be commenced on the —— day of —— last past.

Commencement of partnership.

3. The business of the partnership shall be carried on at or in the present office, No. 100, —— Street, in the county of ——, or at such other place as the partners shall from time to time fix or agree upon.

Place of business.

4. The said newspaper and plant, and the whole partnership concern shall, for the purposes of these articles, continue to be considered as divided into —— shares, which shall be distinguished in numbers in regular progression from —— to —— inclusive; And —— of the shares numbered from —— to —— shall belong to the said [A. B.]; the —— shares numbered —— to —— shall belong to the said [C. D.]; and one share numbered —— to the said [E. F.]; and the remaining —— shares numbered —— to —— shall belong to the said [G. H.].

Newspaper and plant to be divided into shares.

5. The money now at the bankers, and the monies now owing to the said newspaper subsequently to the —— day of —— last, and the plant shall, with the accumulation of the profits hereinafter referred to, constitute the capital and fund for carrying on the publication of the said newspaper, to meet the current expenses thereof; and all the monies received on the account of the newspaper shall from time to time be paid

As to capital.

Monies received to be paid to bankers.

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into the hands of such bankers as may from time to time be agreed upon by all the partners.

Cheques to be signed by all parties if not more than four.

6. Until by assignment of shares there shall happen to be more than four partners in the said concern, no money shall be drawn out of the hands of the bankers of the partnership, except by cheques signed by all the partners or by a person authorised under their joint hand, and when there shall be more than four such partners, the power of drawing cheques for such money shall be delegated to such one or more of the partners, or such person or persons as may be appointed in writing by them, as the partners for the time being shall agree upon for that purpose.

If more than four by person appointed.

Partners to contribute to expenses.

7. The partners shall contribute proportionately to the number of shares held by them respectively to the payment of all damages, costs, charges, and expenses which may be incurred for or on account of the said newspaper, or any article, matter, or thing whatsoever therein contained.

[A. B.] to be editor for twelve months;

8. The said [A. B.] shall for the space of —— calendar months from the commencement of the partnership be the editor of the said newspaper, and shall have the sole and exclusive control of the political department thereof, so that no political essays or articles whatsoever shall be inserted in the said newspaper except by him, or by his express permission; And after the expiration of such —— months, the said [A. B.] shall continue to be such editor, and have such sole and exclusive control, until the partner or partners for the time being having the majority of shares in the partnership concern shall otherwise direct; and the said [A. B.] shall receive a salary after the rate of £—— per annum for such editorship by quarterly payments, in addition to his share of the profits of the partnership; Provided always, that the right under this article of the said [A. B.] to be such editor shall cease if he shall assign, within the term aforesaid, all his shares or share for the time being held by him in the partnership concern.

and afterwards until removed.

Salary.

Right of partner to be editor to cease on assignment of his share.

No survivorship as between partners.

9. As between the partners, there shall be no benefit of survivorship; and the executors and administrators of each partner who shall die shall become entitled to his share as part of his personal estate; And it shall be lawful for any partner, or his executors, or administrators, to assign all or any of his shares or share, or any interest in the partnership concern, subject to the provisions as to pre-emption herein contained.

Partners may assign shares.

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10. The partnership business shall be managed, and all matters relating to the printing and publishing the said newspaper, and the conduct of the partnership concern, except as herein specially provided, shall be determinable by resolutions made and entered into at meetings of the partners.

Partnership business to be managed at meetings of partners.

11. All questions shall be determined at the meetings of the partners by the majority of votes, and each party shall on every question be entitled to give one vote in respect of each share which he shall hold at the time of giving his vote.

Each share to have one vote.

12. A monthly meeting of the partners shall be held on the first Wednesday in every calendar month, at — o'clock in the afternoon, at the place at which the business of the said newspaper shall for the time being be carried on; and any partner may call a special meeting of partners at any other time at the same place, by giving —— clear days' notice thereof by letter addressed to the other or each of the other partners for the time being, in which shall be specified the business to be discussed.

Monthly meetings to be held.

Special meetings may be called.

13. At such monthly meetings the monthly accounts of the partnership shall be inspected, and audited, and general directions given for the management and conduct of the partnership concerns.

Monthly accounts to be audited at monthly meetings.

14. At the monthly meetings in June and December in every year, a general account shall be stated of the affairs of the partnership since the commencement thereof, or, as the case shall require, since the last half-yearly account; and such general account shall specify all monies received, and all disbursements whatsoever made on account of the partnership, and the debts and demands then outstanding against the partnership.

A general account to be stated half-yearly.

15. The said account shall be inspected, and audited, and a balance struck by the said meeting, and the same account, when so audited and balanced, shall be signed and allowed by the partners.

Half-yearly balance sheet.

16. The accounts containing such balance when so ascertained, signed, and allowed as aforesaid, shall be conclusive on the partners, except some error or errors therein to the amount of £—— or upwards shall be discovered, and notice thereof given at or before the first half-yearly meeting next after the meeting at which such account shall have been signed and allowed; and such error or errors so discovered shall be adjusted and corrected at the meeting, at or imme-

Provision as to errors.

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diately before which such notice shall have been given, prior to the examination of the half-yearly account to be adjusted and settled at that meeting: And if any error or errors (except in cases of fraudulent entries or wilful concealment) shall not be discovered, and notice thereof shall not be given prior to the half-yearly meeting next after the meeting at which the account wherein such error or errors shall have been discovered shall have been allowed as aforesaid, then such error or errors shall not be opened or disturbed at any subsequent meeting or meetings, or be the subject of any action or proceeding; But no lapse of time shall prevent the examination or correction of any fraudulent or apparently wilful concealment.

On settlement profits to be retained as capital.

17. On the settlement of each half-yearly account, the profits (if any) appearing on the balance of any such account not exceeding the sum of £——, or such portion of that sum as all the parties shall agree upon, shall be retained as capital for carrying on the partnership business, and answering the current demands thereon: And in case the profits appearing on such half yearly account shall exceed the sum of £——, the surplus beyond that sum shall be divided among the partners proportionately to the number of shares held by each of them respectively; But in case the balance in such half-yearly account shall show a loss to the partnership business, then and so often as it shall so happen such loss shall be immediately made good by the partners proportionably to the number of shares held by each of them respectively, on one calendar month's notice in writing to be served on such partner or partners, either personally or by post, addressed to him or them at his or their usual or last known place of abode in England; And if any partner shall neglect to make good his share and proportion of such loss for the space of one calendar month next after the service of such notice, then and in such case the shares or share of the partner making default shall, if the other partner or partners shall make good such loss, be forfeited to and held by the other partners or partner for their and his own benefit.

Surplus paid to partners.

Losses to be made good to partners;

and if any refuse their shares to be forfeited.

At half-yearly meeting value to be put upon newspaper, &c., at —— years' purchase.

18. At the monthly meeting in every month of June and December, an estimated value shall be put upon the said newspaper and plant, in manner hereinafter mentioned (that is to say) at the rate of —— years' purchase on the amount of the profits of the partnership business which have accrued

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during the —— months previous to such meeting, as settled and allowed by the partnership meeting.

Pre-emption price;

19. For the purpose of these articles the pre-emption price of each share shall, during the first year of the partnership, be fixed at the sum of £——, unless the said sum shall fall short of a like share in the estimated value fixed at the half-yearly meeting of the partners last before the time when the right of pre-emption shall be exercised; and in every case after the expiration of the said term of one year, the pre-emption price of each share shall be a like share of the estimated value of the newspaper and plant fixed at the half-yearly meeting of the partners last before the time when the right of pre-emption shall be exercised.

afterwards to be determined by estimated value.

Partner who wishes to sell to give others notice.

20. If the said [A. B.], [C. D.], [E. F.], or [G. H.], or any future partner shall desire to sell or dispose of one or more of his shares in the partnership business and premises, he or they shall leave or cause to be left at the usual or last known place of abode in England of the other partners or partner, a notice in writing of his or their desire to sell or dispose thereof, and thereupon the other partners or partner shall have a right of pre-emption or option of purchasing the share so intended to be sold or disposed of at the pre-emption price hereinbefore mentioned: Provided always, that in case of any dispute or difference as to the partner or partners by whom such right of pre-emption is to be exercised of purchasing any shares or share, such dispute or difference shall be determined by lot.

Proviso as to disputes respecting exercise of right of pre-emption.

Partners may after notice given sell to other persons, &c.

21. If such other partner or partners or any of them shall within —— days after such notice given not elect and agree in writing to avail himself of such option as aforesaid, and to make such purchase, and, within —— days after such notice, complete his purchase, then the partner who shall have given such notice his or their respective executors or administrators may sell and assign the same share or shares to any person or persons who may be willing to purchase the same; and each share so sold shall vest in the purchaser thereof, when and so soon as he shall, at his or their own costs and charges, execute and deliver to the other partner or partners an effectual deed whereby such assignee shall accept the assignment of such share or shares and agree to become a partner in the said business and shall become bound to perform and observe all the stipulations contained in these presents; and no purchaser shall be entitled to have or receive

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any part of the profits accruing on the shares so purchased by him or them, or in anywise to interfere in the partnership business, until he or they shall have duly executed such deed in manner aforesaid: PROVIDED ALWAYS that in no case shall it be lawful for any partner to sell less than one share, nor shall any share be vested in two or more persons jointly or in common, except as executors or administrators of a deceased partner.

Proviso limiting right of sale of shares.

No other publication to be published on partnership premises.

22. No newspaper, or literary periodical publication, other than the said partnership newspaper, shall be printed, published, edited, or sold at or in the premises for the time being used or occupied by the partnership, unless the same shall have been previously permitted by all the partners, or all such of the partners for the time being as shall be present at the meeting specially called for that purpose.

Not to enter into obligations, &c.

23. NEITHER of the partners shall enter into any obligation, or draw, accept, or indorse any note of hand or bill of exchange, in the name of the partnership, or on account thereof, or knowingly or willingly do, or suffer to be done any act, or deed, matter, or thing whatsoever, whereby the property or effects of the other partners for the time being, or the money, goods or effects of, or debts due to the partnership may be seised, extended, attached, or taken into execution, incumbered or affected in any manner whatsoever except in conformity with the stipulations of these presents.

If he do so, may be dismissed from partnership.

24. IF any partner for the time being shall enter into any obligation, or draw, accept, or indorse any note of hand, or bill of exchange as aforesaid, or shall willingly or knowingly do any act as aforesaid, by which he or they may render the said partnership effects or the property, goods, debts and effects of any other or others of the partners for the time being liable as aforesaid it shall be lawful for the other partners upon full proof of the offence so committed to dismiss the offender from the partnership, and to sell the share or shares held by him, and by and out of the money to arise from such sale or sales, to pay and satisfy the judgment, bond, bill or note so affecting the credit of the partners, and to pay over the surplus (if any) of such money to such offender, his executors, administrators, or assigns.

Account books to be kept;

25. PROPER books shall be kept wherein shall be entered a particular account of all sums of money received and expended on account of and advertising in and printing, publishing,

collecting information for, or selling the said newspaper and every matter relating thereto.

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26. No books of account, letters, papers, memoranda, and writings in anywise relating to or concerning the said newspaper or partnership shall at any time or times or under any pretence except in case of fire be removed from the place or places where the same shall be usually kept without the consent of the partners.

not to be removed.

27. The said partners shall at all reasonable times have free access to such books of account, letters, papers, memoranda, and writings, with full liberty to inspect and compare the same, and to take such copies thereof, or extracts therefrom, as he or they shall think proper.

Partners to have access to books, &c.

28. No books of account, vouchers, documents, letters, papers, memoranda, or writings belonging to the partnership shall be defaced or destroyed without the consent of all the partners.

Books, &c., not to be destroyed.

29. In case any one of the partners for the time being shall consider it expedient to discontinue the publication of the said newspaper, and shall give notice in writing of his desire to relinquish his interest in the partnership concern, unless such publication shall be discontinued, after the second week of publication after the time of giving such notice, (such notice to be given to the other partner or partners or left at his or their usual place of abode or at the office of the partnership concern), then and in such case from and immediately after such second week of publication, the partner giving or leaving such notice shall cease to be answerable for the losses, or interested in the profits of the partnership concern, but his whole shares and interest in the said newspaper and plant shall belong to the other partner or partners, and the publication shall be thenceforward at the risk, and for the benefit of such other partner or partners.

If any partner think it expedient to discontinue publication he may relinquish his share;

and cease to be answerable for losses.

30. [*Arbitration clause ut ante*, p. 378.]

Arbitration clause.

In witness, &c.

X. *ARTICLES of PARTNERSHIP in a* COAL MINE, *demised to* TRUSTEES. CLAUSES *regulating the* CAPITAL *to be employed—the appointment and duties of* MANAGER—GENERAL MEETINGS *and settlements of* ACCOUNTS—*and the* TRANSFER *of* SHARES. POWERS *to* DISSOLVE *or to* EXTEND *the* TERM *of the Partnership*—POWER *to* EXPEL PARTNERS *who do not observe the regulations.*

Parties.

Recitals: of lease; of agreement for partnership;

that premium for lease was contributed by partners.

Testatum.

Covenant and declaration of trust.

THIS INDENTURE (*x*), made the —— day of ——, BETWEEN [*trustees*], of the one part, and [*other partners*], of the other part. WHEREAS [*recite lease of mines to trustees*]: AND WHEREAS the said parties hereto have agreed to enter into partnership in the working of the mines comprised in the said lease and in the selling of the produce thereof, upon the terms and in manner hereinafter contained and expressed: AND WHEREAS the said sum of £—— [*premium for lease*] was contributed by the several parties hereto of the second part in the shares and proportions, in which it is hereinafter provided that they shall be entitled to the property of the partnership or company intended to be hereby constituted. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, they the said [*trustees*], hereby severally covenant with the said parties hereto, of the second part, severally and respectively that they the said [*trustees*], their executors, administrators, and assigns, shall and will stand and be possessed of and interested in the mines, hereditaments, and premises comprised in and demised by the said lease during the said term of —— years, and during any other term or terms which the said [*trustees*], their executors, administrators, or assigns, acting as trustees for the partnership hereby contemplated, may obtain therein under any future lease or leases thereof, subject to the rent or rents, and covenants in and by the said indenture of lease, or in and by any lease or leases to be hereafter thereof made as aforesaid, and on the lessees' part to be respectively paid, observed, and performed, In trust for the several parties hereto of the first and second part, and their respective executors, administrators, and assigns, in the shares, proportions, and in manner here-

Stamps.

(*x*) Two stamps of 10*s.* each, in respect of the declaration of trust and the articles of partnership respectively.

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inafter mentioned; And shall and will, during the continuance of the said term or terms, pay, observe, and perform such rent or rents, covenants, and conditions respectively as aforesaid. AND THIS INDENTURE FURTHER WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the premises, each of the said parties hereto, so far as the covenants and agreements herein contained are to be performed and observed by him, his executors and administrators, hereby covenants with the others of them jointly and severally in manner following: (that is to say),

Second *testatum.*

Mutual covenants.

1. THE parties hereto shall and will, subject to the provisions herein contained, become and continue partners in the business of coal masters and coal and coke merchants, as from the —— day of ——, 18 , for the term of —— years, or until the said coal mines shall be exhausted or abandoned as hereinafter mentioned, for the purpose of digging, trenching, working and winning the mines, seams, and veins comprised in the above-recited indenture of lease, and of manufacturing, selling, and disposing of the produce thereof.

Agreement for partnership.

2. THE business of the partnership shall be carried on under the name or firm of "The —— Coal Company" (which firm is hereinafter called "the company"), at —— aforesaid, or at such other place or places as shall be determined by a majority in value of the partners for the time being in manner hereinafter mentioned.

Name of firm.

3. THE title to and interest in the property of the company shall be divided into —— equal shares, of which shares —— shall belong to [*partner*], —— to [*other partner*], —— to *other partner*], &c.

Shares.

4. THE original capital of the company shall consist of the said mines and premises comprised in the said lease (which are estimated and shall be taken to be of the value of £——), and of money capital to the amount of £——, which shall be contributed by the said partners in proportion to their respective shares and interests in the property of the company for the time being; and by such instalments and at such times as shall be agreed upon by a majority in value of the partners for the time being, as hereinafter mentioned.

Capital.

5. THE capital of the company may at any time or times

Additional capital.

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be increased pursuant to a special resolution to any amount not exceeding the further sum of £—— in addition to the original capital; and such additional capital shall be contributed and paid by the partners in proportion to their respective shares and interests in the property of the company for the time being, and shall be credited to them in the proportions in which it shall be brought in.

Advances and undrawn profits.

6. The company may at any time or times authorise any partner or partners to advance any sum or sums of money to the company, or to leave undrawn any sum or sums to which such partner or partners shall, upon the taking of any such annual account as is hereinafter mentioned, appear to be entitled in respect of profits, by way of loan to the company to be repayable to him or them by the company —— calendar months after demand in writing, and to bear interest as from the time of the making of such advance or of the taking of such account (as the case may be) at the rate of —— per cent. per annum: [Provided always that no one partner shall, except pursuant to a special resolution, be authorised to advance or leave undrawn by way of loan any sum or sums in the aggregate exceeding the sum of £—— over and above the sum or sums for the time being contributed by him in respect of capital; and for this purpose the collective holders of any share or shares shall be deemed to be one partner.]

Remedy in case of non-payment of calls.

7. Upon the neglect or refusal of any partner to pay his proportion of the capital or any instalment thereof, it shall be lawful for the other partners for the time being, either to charge such defaulting partner with such proportion, and with interest thereon, at the rate of —— per cent. per annum, or at their option, to sell and dispose of all or any of the shares or share of such partner in manner hereinafter provided, in case of a breach of any of the agreements herein contained; and in case they shall sell and dispose of all the share and interest of such partner in the company, then to expel such partner in manner and with the consequences hereinafter provided.

Appointment of first manager.

8. Mr. [*manager*] of, &c., shall be the first manager of the company, and shall continue to act as such manager for the period of twelve calendar months from the date of these presents, and thereafter, unless and until he shall resign his appointment by giving to the company notice in writing of his intention to resign at least three calendar months before such

resignation, or unless and until he shall be removed or dismissed in manner hereinafter provided.

Duties and salary of manager.

9. The said manager shall manage and transact the works and business of the company, and act for and on behalf of the company, at such quarterly salary as shall be agreed upon, but subject in all respects to the superintendence, management, direction, and control of the said company, and to removal or dismissal by them at any time after the expiration of twelve calendar months from the date of these presents, with or without previous notice or cause assigned; Provided, that the said manager in case he shall be removed or dismissed, shall be entitled to his salary, or an apportioned part thereof, for the full period of three calendar months next following the day on which he shall receive notice of such removal or dismissal.

Power to appoint, &c., future managers.

10. The company may from time to time appoint and remove any other person (whether a partner or not) to be manager of the company, with such powers and authorities, upon such terms, and subject as aforesaid, subject to any agreement between the company and such other person on his appointment.

Deputy manager.

11. Mr. [*deputy manager*], or in case he shall be absent or otherwise unable to act Mr. [*other deputy*], or in case he also shall be absent, or unable to act, then Mr. [*other deputy*] shall be the deputy manager for the time being, to act in case of and during the absence, illness, or other incapacity of the said manager, or of his successor for the time being, subject as aforesaid; And the company may from time to time appoint any other person or persons to be a deputy or deputies for the purposes aforesaid; and may from time to time and at any time remove any deputy manager, or deputy managers, with or without notice or cause assigned, subject to any agreement between the company and such deputy manager or deputy managers on his or their appointment.

Authority of manager.

12. The manager for the time being may engage and employ such clerks, agents, servants, miners, labourers, and workmen, and at such salaries as he shall think fit (but subject to such control as aforesaid), and may make all usual and proper contracts and payments for the management and carrying on of the business and works of the company; And such manager shall observe and perform in all respects the covenants and conditions contained in the above recited lease, and in every other lease of any hereditaments and premises to

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be for the time being employed for the purposes of the company. But such manager shall not, without the previous sanction of the said company, unless there be an urgent necessity for doing so, commence or prosecute any action or proceeding against any person or persons; Nor release or compound for any debt or debts amounting to £20 or upwards, which shall be owing to the company and not fully paid; Nor on any account, without such previous sanction, draw, make, accept, sign, or indorse any bill of exchange, promissory note, or other draft or security in the name or on account of the company, except in the ordinary course of transacting the necessary business of the company; and any manager who shall break this last condition, shall immediately pay to the use of the company twice the amount of the sum for which such bill, note, or other draft or security shall purport to make the company liable, as liquidated damages.

Not to commence actions, release debts, negotiate bills, &c.

Members not to interfere in business.

13. No partner except the manager for the time being shall buy, order, sell, or contract for the purchase or sale of any goods, wares, merchandizes, or articles for the said company, or draw, make, accept, sign, or indorse any bill of exchange, promissory note, draft, or other security, or enter into any other contract for or in behalf or on account of the company (otherwise than by voting as aforesaid), or meddle or interfere (otherwise than as aforesaid) with the goods, effects, or business of the company.

Each member to pay his private debts.

14. Each of the partners for the time being of the company shall, from time to time, pay and discharge all the private and separate debts now or hereafter due or owing from him or her to the company, or to any other person or persons whomsoever, and shall keep indemnified the company and the other members thereof, and the property, estate, and effects of the company and members from and against such private and separate debts, and all actions, executions, proceedings, costs, damages, and expenses for or on account of the same or relating thereto.

Quarterly meetings.

15. The company shall meet quarterly at noon on the first Monday in every January, April, July, and October in every year, or on such other day within fourteen days next before or after each day, as the manager for the time being shall appoint, and that in all cases fourteen days' previous notice of each such meeting shall be previously given by such manager by advertisement in some newspaper published and

generally circulated within the said city of ——, and also by a circular letter to be sent through the post by such manager to every member of the said company, whose address shall be known to or readily discoverable by such manager.

Extraordinary meeting.

16. On the written requisition of any three of the members of the company, an extraordinary meeting of the company shall be convened at not less than a week's notice by means of such advertisement and circular as aforesaid, to be respectively signed, inserted and issued either by such manager, or in case of his refusal or neglect, by the members, or any three of them requiring the same; Provided always, that the object of calling such meeting shall be expressed in such advertisement and circular respectively, and that such meeting shall not have any authority or power to bind the company in respect of any matter which shall not fairly come within the object of the meeting, as expressed in such advertisement and circular respectively.

Mode of voting.

17. Each holder, or the collective holders of one —th share in the company, shall be entitled to a vote in respect of such share, and each holder or the collective holders of more than one —th share shall be entitled to a vote in respect of each —th share so held by such holder or collective holders; And such vote or votes may be given by such holder or collective holders personally or by any member of the company whom he or they may, by writing under his or their hand, authorise to vote on his or their behalf at any particular meeting, or on any particular question at such meeting, such authority being given within the three weeks next preceding such meeting, but extending (unless revoked) to any adjournment of such meeting.

Special resolution.

18. A special resolution within the meaning of these articles shall mean a resolution passed at an extraordinary meeting of the company by a majority in number, and not less than three-fourths in value (in respect of shares) of the members voting personally or by proxy as aforesaid at such meeting.

Ordinary resolution.

19. All questions relating to the company and its property and business, not hereby expressly required to be determined by a special resolution, may be determined either at a quarterly or extraordinary meeting by an ordinary resolution, that is to say, a majority in number of the members voting personally or by proxy at the meeting. In case of an equality

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of votes on an ordinary resolution, the same shall be deemed to have been negatived.

Minutes.

20. The manager, or, if he shall be unable to attend, the deputy manager, for the time being, shall attend every quarterly and extraordinary meeting, and shall enter true and accurate minutes of all resolutions passed at, and proceedings of, such meeting in a book to be kept for the purpose.

Books of accounts, &c., to be kept.

21. All usual and necessary books of account shall be provided at the expense of the company, and kept by the manager for the time being, in which shall be clearly written or entered a just, true, complete and particular account of all sums of money paid and received, and of all debts contracted and sales and purchases made, and of all other matters and things conducive to and proper for manifesting the true state and condition of the affairs of the company, which books, together with the said lease, and all other deeds, securities, maps, plans, letters, documents, and vouchers, belonging to the company, shall be kept at the principal office of the company, and be there subject to the free inspection of every member of the company, or his agent or solicitor at all reasonable times, for the purpose of perusing or examining the same, or of taking extracts or copies from or of the same.

Bills, &c., to be made in name of the firm.

22. All bills, notes, receipts, accounts, and securities shall be made and taken by the manager or trustees for the time being in the name of the company, and all bonds, conveyances, securities, and assurances shall be made and executed in the names of the said [*trustees*], or such other persons as shall be appointed by the company for such purpose.

Annual general account.

23. In the quarterly meeting which shall take place in or for the month of April in each year, a general account in writing shall be taken and made by the partners of all sales which shall have been made, and of all the stocks, monies, credits, debts, and liabilities of the company, and of all such other matters as are usually comprehended in annual accounts of the same nature, or shall be necessary and proper in relation to the business and transactions of the company, and a just valuation and appraisement shall be made and approved by the parties present at such meeting, of all the particulars and matters included in such account which are capable of being appraised, and the materials for such appraisement shall be furnished by the manager for the time being, who shall also distinguish to the best of his ability between the good

and the bad debts due to the company, and such general account and valuation shall from time to time be entered in a book (to be kept as aforesaid), and signed by the members of the company for the time being, who shall also sign any duplicate thereof which may be required and tendered to be signed by any of the said members; and the allowance and signature of such account by the majority of the members present at any such meeting as lastly aforesaid, or at any adjournment of such meeting, (the time and place of such adjourned meeting having been duly notified in manner aforesaid one week at the least before the happening thereof), shall be binding on all the members of the company, except as to any manifest error to the amount of £20 or upwards which may be discovered within the year following such meeting: PROVIDED ALWAYS that no member shall be entitled to receive any dividends or profits arising from the partnership transactions, unless and until he shall have signed such annual account.

Power for partners to transfer or bequeath shares.

24. IT shall be lawful for any partner during his life or, by will, after his decease, with the consent of the other partners expressed by special resolution, to introduce into the company any one person, being of full age, whom he may think proper, and to transfer to him all or any of his shares or share in the company; and also, by will, without such consent, to bequeath to any son or sons, being of full age, all or any of the shares or share which such testator shall hold at his death: PROVIDED ALWAYS that nothing herein contained shall authorise the transfer or bequest of less than one entire share to any person.

Cesser of membership.

25. IF any partner shall during the continuance of the company become insane, or bankrupt, or suffer a receiving order to be made against him, or enter into any composition or arrangement, statutory or otherwise, for the benefit of his creditors generally, then such partner shall so far as he is concerned cease to be a member of the company.

Retirement.

26. ANY partner may retire from the company on the 31st day of December in any year during the partnership term upon leaving for the manager, or sending to him through the post, at the office for the time being of the company, not less than six months previously, a notice in writing of his intention to retire.

Payment out

27. IF any partner shall die during the continuance of the

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of share of deceased, &c., partner.

company, or so cease as aforesaid to be a member of the company, or retire therefrom, the partnership relation or contract hereby intended to be constituted shall not be determined as between the other members of the company, but shall continue until the end of the partnership term subject to the covenants, stipulations, and provisions herein contained so far as applicable to such continued partnership; and in such case, if the partner so ceasing to be a member of the company or dying shall not have transferred or bequeathed the whole of his shares or share in the company, the value of the shares or share for the time being held by him shall be ascertained, and after deducting therefrom the amount (if any) which shall be required for the settlement and discharge of the demands of the company against such member, shall be paid out to him, or his committees, assignees, or executors or administrators, out of the capital, assets, and profits of the company.

Mode of ascertaining value of shares of outgoing partner (*y*).

28. For the purposes of the payment to be made pursuant to the last article, in the case of a partner so dying or ceasing to be a member of the company, or retiring therefrom as aforesaid before the —— day of —— next (*z*), then the value of each share held by him for the time being shall be taken to be an aliquot share of the estimated value of the said mines and premises comprised in the said lease, and of the money-capital contributed by him for the time being, with interest thereon at the rate of —— per cent. per annum, to be computed as to the estimated value of the said mines and premises as from the date of these presents, and as to the said money-capital as from the time at which it shall have been contributed; and in the case of a partner so dying or ceasing to be a member of the company, or retiring therefrom after the —— day of —— next, then the value of each share held by him for the time being shall be taken to be an aliquot share of the property and assets of the company as shown by the last preceding annual general account (which account shall for this purpose be binding and conclusive on all persons interested) with interest thereon at the same rate from the date of such account: Provided always that in addition to

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(*y*) The efficacy of this provision as against a trustee in bankruptcy is very doubtful, see *ante*, p. 385, note (*q*).

(*z*) This will be the day fixed for taking the first general account, see Clause 23, p. 462.

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payment of the value of the shares or share so ascertained as aforesaid and of interest thereon as aforesaid the person or persons entitled to receive payment of the same shall also be entitled to repayment by the company of all advances made to the company, or undrawn profits left in the business pursuant to Article 5, and interest accrued due thereon.

Mode of payment of ascertained value of outgoing partner's share.

29. The sum to be paid out under Article 27 hereof shall be paid either immediately, or as soon as conveniently may be, in one aggregate sum, with interest at the rate aforesaid as from such death, cessation of membership, or retirement as aforesaid until actual payment thereof, or (if the surviving or continuing partners shall so determine) by four equal instalments to be secured in manner hereinafter mentioned, that is to say, the surviving or continuing partners shall enter into a joint and several bond in a sufficient penalty for securing the amount of the said sum to the person or persons entitled thereto by four equal instalments at the respective periods of six, twelve, eighteen, and twenty-four calendar months next after the date of such death, cesser of membership, or retirement as aforesaid, with interest as from that date for so much of the said sum as shall for the time being remain unpaid at the date of the payment of each instalment, but with power for the surviving or continuing partners or partner at any time to pay off by way of anticipation the whole or the instalments or instalment for the time being unpaid of the said sum with any interest accrued due up to the day of payment on giving to the person or persons entitled to receive such payment —— days' notice in writing of their intention so to do.

Business to belong to surviving or continuing partners.

30. All shares and interest of a partner so dying, ceasing to be a member of the company, or retiring, of and in the goodwill, property, assets and profits of the company, shall as from the death, cesser of membership, or retirement belong to, and the whole of his liabilities in respect of the business and transactions of the company after that date shall be borne by the surviving or continuing partners alone, and all proper and necessary assignments, transfers, and assurances shall be made and executed by the executors or administrators of the partner so dying as aforesaid, or by the partner so ceasing to be a member of the company or retiring, or his committees, trustees, or assigns for effectually vesting his shares or share and interest in the company in the surviving partners and for

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releasing the surviving partners from all claims and demands of such partner, his executors, administrators, committees, trustees, or assigns as the case may require; And the surviving partners shall, by bond or otherwise as may reasonably be required, effectually indemnify and thereafter keep indemnified such partner, or his executors, administrators, committees, trustees, or assigns, and his and their estates and effects against all actions, proceedings, claims and demands on account of the partnership.

Power of expulsion.

31. If any member of the company, except as aforesaid, shall draw, make, accept, sign, or indorse any bill, note, draft, or security on account of the company, or if the effects, property, or moneys of the company shall be attached, seized, or taken in execution on account of any private debt or engagement of any member, or if any member shall apply to his own separate use any of such effects, property, or money, it shall be lawful, by a special resolution, to dissolve and put an end to the partnership, so far only as such offending member shall be concerned, and to expel him therefrom, and the share and interest of such member in the partnership shall, at the option of such majority, be either retained by the company at its value, to be ascertained by valuation as provided in Article 28 hereof, and the value of such share or shares shall be applied in the settlement or reduction of the demands of the company against such offending member, and the surplus, if any, shall be paid to such offending member, on his making and executing such assignments, transfers, and assurances as may be necessary for vesting his shares or share and interest in the property and assets of the company in the continuing partners, and for releasing all demands against the company in respect of his partnership therein.

Power to dissolve or prolong partnership.

32. It shall be lawful for the members for the time being, by special resolution, either to discontinue and dissolve the said partnership before the expiration of the said term of —— years (such discontinuance or dissolution not to take effect before the expiration of three calendar months from the day on which such meeting shall be held), or during the last year of such term, to continue and extend the partnership for any additional term of not more than —— years upon the terms herein contained, and to procure a renewal of any lease or leases which shall then belong to the company: Provided that no such dissolution or extension of the partnership shall

be valid unless the proposal to make the same shall have been notified by such advertisement and circular as aforesaid, at least two weeks prior to the meeting at which the same shall be made.

X. Articles of a Large Mining Partnership.

Final general account on winding up.

33. IMMEDIATELY upon the expiration of the said term of —— years, or of such extended term as aforesaid, or upon other the determination and dissolution of the partnership, a general account in writing shall be made of all the partnership estate, effects, assets, credits, debts, and liabilities, and such estate, assets, and credits, shall be immediately realised, sold, and converted into money, and the proceeds, after the full and complete discharge of or provision for all the partnership debts and liabilities, shall be divided among and paid to the members of the company for the time being, or their respective executors, administrators, or assigns, in the several shares and proportions, in which they shall respectively be entitled thereto.

Arbitration clause.

34. [*Arbitration Clause, ut ante*, p. 378].

IN WITNESS, &c.

XI. *ARTICLES OF PARTNERSHIP on the* ADMISSION *into an existing firm of two* JUNIOR PARTNERS, *where the old Articles are to continue in force as between the original Partners.*

THIS INDENTURE (*a*), made the —— day of ——, 18—, BETWEEN [A. B.], of, &c., and [C. D.], of, &c., of the first part; [E. F.], of, &c., of the second part; and [G. H.], of, &c., of the third part: WHEREAS the said [A. B.] and [C. D.] have for some years last past carried on the trade or business of —— at —— in partnership with [J. F.] under the style or firm of [B.] and Company; AND WHEREAS by a memorandum of agreement dated the —— day of ——, 18—, and made between the said [A. B.] and [C. D.] of the first part, the said [J. F.] of the second part, and the said [E. F.]

Parties.

Recitals: of old partnership;

of agreement for retirement of one of the partners and the admission of his son in his stead;

(*a*) Stamp, 10*s*.

XI. Articles of Accession to Partnership.

of the third part, after reciting to the effect hereinbefore recited, and reciting that it had been agreed that the said partnership should cease and determine as from the —— day of ——, 18—, by the retirement therefrom of the said [J. F.], and that the said [E. F.], the son of the said [J. F.], should be taken and received as a partner with the said [A. B.] and [C. D.] in the said business, upon and from the —— day of ——, 18—, for the term of seven years as was thereinafter expressed, it was agreed and declared by and between all the said parties thereto, that in consideration of the retirement of the said [J. F.] from the said partnership, in manner therein mentioned, that they the said [A. B.] and [C. D.] would admit the said [E. F.] to be a partner with them in their said trade or business of —— as from the —— day of —— last for the term of —— years, without requiring the said [E. F.] to bring any capital into the business, and would allow the said [E. F.] one-sixth share of the profits and gains thereof; And the said [A. B.], [C. D.], and [E. F.], thereby severally agreed with each other that they would be and continue such partners together from the —— day of ——, 18—, for the said term of seven years, the said [E. F.] taking one-sixth part, share, or interest therein; That interest at —— per cent. per annum should be allowed out of the profits and gains of the said business to the said parties respectively upon the capital which they should respectively have or leave in or bring into the business during the said partnership; That proper articles of partnership between the said parties should be prepared by the solicitor of the said [A. B.] and [C. D.], with all usual and proper clauses, in which provision should be made for the introduction of [D. D.], the son of the said [C. D.], as a partner in the said trade or business without capital, and with one-sixth part share in the profits and gains thereof, upon or after his attaining the age of 24 years, in case of the decease of the said [C. D.] at any time during the said partnership of seven years: And whereas the said [A. B.], [C. D.], and [E. F.], have agreed to admit the said [G. H.] into partnership with them in their said trade or business under the stipulations and agreements hereinafter contained, but upon the understanding that such admission of the said [G. H.] as a partner is not to interfere with or affect the partnership between them the said parties hereto of the first part, except so far only as may be necessary for giving effect to the said stipulations and

of agreement to admit a fourth partner into the firm.

XI. Articles of Accession to Partnership.

agreements hereinafter contained, so that the said parties hereto of the first part may respectively exercise all the powers, privileges, and functions, and shall respectively do and perform all the acts and offices to be exercised, done, and performed by them respectively under or by virtue of certain articles of partnership of the —— day of ——, 18—, in the same manner (except as aforesaid, and also except so far as at any time or times hereafter may be mutually agreed on between themselves), as if these presents had not been made and executed: And whereas the said [A. B.], [C. D.], [E. F.], and [G. H.], have agreed that the trade or business of —— shall be henceforth carried on by them in partnership together for the term and under and subject to the covenants, stipulations, and provisions hereinafter expressed and contained.

of agreement for partnership between continuing and new partners.

Testatum.

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and in consideration of the premises, each of them the said parties hereto hereby, so far as the covenants, stipulations, and conditions herein contained are to be observed and performed by him, his executors or administrators, covenants and agrees with the others and each of them in manner following, that is to say,—

Mutual covenants.

1. Each of them the said [E. F.] and [G. H.] shall as and from the said —— day of ——, 18—, be and continue partners with the said parties hereto of the first part, in the said trade or business of —— as carried on by the said parties hereto of the first part in —— aforesaid, until the —— day of ——, 18—.

To become partners.

2. Neither of them the said [E. F.] or [G. H.] shall have any share, right, or interest whatsoever in the leases, stock, property, or effects of the partnership, but such leases, stock, property, and effects shall belong exclusively to the said parties hereto of the first part; but if the said parties hereto of the first part shall in writing consent that either of them the said [E. F.] and [G. H.]; And in case either of them the said [E. F.] and [G. H.] shall, with such consent as aforesaid, bring into, or leave in the said trade or business any moneys, such moneys shall be considered as a loan to the partnership, from the partner so bringing in, or leaving the same, and interest at the rate of —— per cent. per annum shall be payable to him for the same; but the said [E. F.] or [G. H.] (as the case may be) shall withdraw such moneys, upon being required so to do in writing by the said partners

Partnership property, &c., to belong exclusively to the original partners; but junior partners may bring in money by way of loan, with consent.

XI. Articles of Accession to Partnership.

hereto of the first part, or the survivor of them, but shall not without the consent of the said parties of the first part as aforesaid withdraw any moneys of either of them the said [E. F.] or [G. H.], which may have been brought into or left in the said business.

As to profits and losses.

3. Each of them the said [E. F.] and [G. H.] shall be entitled to one sixth part, or share in the profits of the business, and shall contribute in the same proportion to all losses which may happen in the course of the business, unless such loss shall be occasioned by the wilful neglect or default of any of the said partners, in which case the same shall be made good by the partner or partners through whose neglect the same shall arise; And as to the remaining four-sixth shares of the said profits, the said parties hereto of the first part shall be entitled thereto in the same proportions in which under the said articles of the —— day of ——, 18—, they would be entitled to the entirety of the same premises.

Weekly drawings.

4. Each of them the said [E. F.] and [G. H.] shall receive in part payment of his share of the profits of the business the sum of £—— per week, and may draw such sum weekly accordingly, such sums to be respectively duly accounted for by the partner receiving the same on every settlement of accounts, and division of the profits of the business as hereinafter mentioned.

Books of account.

5. All the said partners respectively shall keep, or cause to be kept, proper accounts in writing of all moneys received, and paid; of all contracts entered into, and all business transacted on account of the partnership; and all other matters of which accounts ought to be kept according to the usual course of the business; and such accounts, together with all deeds, securities for money, and papers belonging to the partnership shall be kept at such place as the said parties hereto of the first part, or the survivor of them, shall direct, but so nevertheless that the said [E. F.] and [G. H.], as well as the said parties hereto of the first part respectively, shall at all reasonable times have free access to examine the same.

General accounts.

6. During the continuance of the partnership intended to be hereby created, the parties hereto shall at the yearly periods specified in the said articles of the —— day of ——, 18—, for taking the accounts of the partnership thereby established, that is to say, on, or as soon as conveniently may be after, the first day of June in each year, make a full and correct

XI. Articles of Accession to Partnership.

account in writing of all credits and effects due, owing, and belonging to such partnership, and of all debts and liabilities due and owing from or by the same, according to the usual mode of making out such accounts among persons engaged in similar business, and cause such accounts to be written in a book to be respectively subscribed by the said parties hereto, and after such subscription the said parties hereto shall be concluded thereby, unless some manifest error to the extent of £—— at the least shall appear within the space of two calendar months next after the making up of such accounts, and be notified by any or either of the said parties hereto unto the other or others of them within that time, and in such case only such error shall be rectified; and upon the making up of every such yearly account, the clear produce of the business, which, according to the provisions of the said articles of the —— day of ——, 18—, is to be considered as the profits of the business to be divided between the parties hereto of the first part after deducting all expenses and outgoings, and rent which may be payable to the said parties hereto of the first part, and all interest which may be payable to them respectively on account of their respective capitals in the business, and making all such other deductions and payments (if any) as are provided for by the said last-mentioned articles, shall be considered as the profits of the business to be divided between the said parties hereto of the first part, and the said [E. F.] and [G. H.]: And the surplus (if any) of one equal sixth share of such profits after deducting from such share the sums drawn by the said [E. F.] on account of such weekly allowance as aforesaid, shall be paid to him accordingly; and the surplus (if any) of one other equal sixth share of such profits, after deducting from such share the sums drawn by him the said [G. H.] on account of such weekly allowance as aforesaid shall be paid to him accordingly: And the remaining four equal sixth shares shall be divided between the parties hereto of the first part, in the proportion hereinbefore mentioned or referred to.

Partners to be true and faithful

7. Each of them the said [A. B.], [C. D.], and [E. F.] and [G. H.] shall be faithful, just, and true to his copartners, and shall during the continuance of the partnership intended to be hereby created, use his utmost endeavours and ability to promote the success and interests of the business.

Junior part-

8. Neither of them the said [E. F.] and [G. H.] shall

XI. Articles of Accession to Partnership.

without the consent in writing of the said parties hereto of the first part, or of the survivor of them, for that purpose first obtained, engage or dismiss any clerk, assistant, apprentice, or servant in the business.

ners not to engage or dismiss clerks, &c., without consent.

Junior partners to attend to business.

9. Each of them the said [E. F.] and [G. H.] will at all times during the continuance of the partnership devote his whole time and attention in the usual hours of business to the business of the partnership, or exclusively to any such department or departments, branch or branches thereof, as the said parties hereto of the first part, or the survivor of them shall at any time direct him to manage, and carry on, or attend to.

Junior partners may buy and sell goods until otherwise directed;

10. Each of them the said [E. F.] and [G. H.] may buy and sell goods for or on account of the partnership in the usual course of business, unless and until he shall receive any directions to the contrary, at any time or times from the said parties hereto of the first part, or the survivor of them;

but not give credit or release debts, &c., without consent.

but neither of them the said [E. F.] and [G. H.] shall enter into any other covenant or agreement with, nor otherwise give credit to any person or persons, nor lend or advance any moneys out of the partnership funds, to any person or persons, nor compound, release, or discharge any debt or duty which shall be due or owing to the partnership, without receiving the full amount thereof, nor sign any instrument whereby any debt or security shall be in anywise discharged, vacated, or diminished, nor endorse or accept any bill of exchange, or draw or indorse any promissory note or draw or sign any cheque in the name of or on account of the partnership without the consent in writing of the parties hereto of the first part, or the survivor of them, first obtained.

Junior partners not to become bail or surety.

11. Neither of them the said [E. F.] and [G. H.] shall become bail or surety for any person or persons, nor draw, endorse, or accept any accommodation bill or note, nor underwrite any policy of insurance, nor make or enter into any time bargain for sale or purchase of stock, nor expose himself to any risk or hazard in any speculation or gaming transaction, nor take, purchase, or hold any share or shares or scrip in any unlimited company or companies, nor assign over his share or interest in the partnership, nor carry on nor be concerned or employed in, either separately or in partnership with any other person or persons, any of the businesses for the time being carried on by this partnership, or any other

trade or business whatsoever; nor knowingly or willingly do, commit, or permit any act, matter, or thing whatsoever by, or by means of which the moneys or effects of the partnership intended to be hereby created shall be seized, attached, sequestered, extended, or taken in execution.

On determination of partnership interest of junior partners to revert to original partners.

12. On the determination of the partnership intended to be hereby created, or upon any dissolution by death or otherwise as to either of them the said [E. F.] and [G. H.] previously to the expiration of the partnership term, the shares or share of them the said [E. F.] and [G. H.], or of such one of them as to whom the partnership shall be dissolved, in the partnership business, and the profits thereof, and in case of such dissolution, by death or otherwise, so much of the said profits for the time which may have elapsed since the day up to which a yearly general statement of accounts or balance sheet shall extend or be stated, as but for such dissolution by death or otherwise would have belonged to the said [E. F.] and [G. H.] as the case may be in right of his one-sixth share shall revert and belong to the said parties hereto of the first part, or the survivor of them, in the same proportions in which they or he shall then be entitled to their or his other shares of such profit.

In case of death of an original partner the devolution of his share to be subject to the original articles.

13. In the event of the death of either of the said parties hereto of the first part, previously to the determination or dissolution as to both of them the said [E. F.] and [G. H.] of the partnership intended to be hereby created, the share or shares of the partner so dying in the business and the profits thereof, shall be subject to the provisions of the hereinbefore mentioned articles of partnership of the —— day of ——, 18—, in the same manner and in all respects (as near as may be) as if these presents had not been executed to the exclusion of the said [E. F.] and [G. H.] and each of them, from any right or interest in such share or shares, it being intended that during the whole continuance of the partnership hereby created one-sixth share only of the said profits shall belong to each of them the said [E. F.] and [G. H.], or to such one of them as shall be a partner in the business, and the remaining shares to the said parties hereto of the first part or the survivor of them according to the provision of the said last-intended articles with respect to the entirety of the said profits.

Proviso that

14. Provided always and it is hereby agreed and declared

XI. Articles of Accession to Partnership.

by and between all the said parties hereto, so far as they are respectively interested or concerned, that the hereinbefore-mentioned articles of partnership of the —— day of ——, 18—, and any future articles of agreement which may hereafter be made by the said parties hereto of the first part, or the survivor of them, and all the provisions therein respectively contained (except so far as they are repugnant to, or inconsistent with the express provisions contained in these presents) and with such variations (if any) as may be made from time to time with the mutual consent of the said parties hereto of the first part or the survivor of them and as well during the continuance of the partnership intended to be hereby created, as after the determination thereof, be and remain in full force and virtue in the same manner as if he the said [E. F.] and [G. H.] had not, nor had either of them, been then partners or a partner; but so nevertheless that the same shall whether varied or not as aforesaid be binding on them the said [E. F.] and [G. H.].

the original articles are to remain in force, except so far as expressly altered.

Power for original partners, notwithstanding dissent of junior partners, to admit a son of one of the original partners into the firm.

15. Provided also and it is hereby particularly agreed and declared that it shall be lawful for the said parties hereto of the first part or the survivor of them, at any time or times during the partnership intended to be hereby created, and without the consent and notwithstanding the dissent of both or either of them the said [E. F.] and [G. H.] and without giving any notice whatsoever to them or either of them in that behalf to admit [D. D.] in the event of the decease of the said [C. D.] during the continuance of the partnership hereby created, but not otherwise, to be a partner in the business in addition to the said parties hereto of the first part or the survivor of them, and to any other partner or partners who may for the time being be in the business for the remainder of the term of the partnership hereby created and with one-sixth share of profits (not being in diminution of the share of profits to which each of them the said [E. F.] and [G. H.] is to be entitled as aforesaid), and subject to such stipulations and provisions in all respects as the said parties hereto of the first part or such of them as shall be living and continuing in the partnership business shall think proper.

In witness, &c.

XII. *ARTICLES OF PARTNERSHIP on the* ADMISSION *of a* SON *of a* PARTNER *into the firm, pursuant to a* PROVISION *contained in the original* ARTICLES OF PARTNERSHIP. [*By Supplemental Deed.*]

THIS INDENTURE (*b*) made the —— day of ——, 18—, BETWEEN [A. B.], of, &c., of the first part; [C. D.], of, &c., of the second part; [E. F.], of, &c., of the third part; and [G. B.], of, &c., a son of the said [A. B.], of the fourth part; AND SUPPLEMENTAL to certain articles of partnership (hereinafter called the articles), dated the —— day of ——, 18—, whereby the said [A. B.], [C. D.], and [E. F.], agreed that they would become and continue partners in the trade or business of ——, at —— aforesaid, for the term of fourteen years from the date of the articles, under the style or firm of [B.] and Company; AND WHEREAS the said [A. B.], [C. D.], and [E. F.], have from the date of the articles up to the present time carried on the said business pursuant to the articles, and they are now respectively entitled to the capital and property of the company consisting of the within-named leasehold premises, and of the plant, stock-in-trade, moneys, credits, and effects of the partnership (the net value of which capital, as appears by the last annual general account taken on the —— day of ——, amounts to £——), in the shares and proportions following, that is to say, the said [A. B.] to six equal tenth shares thereof, the said [C. D.] to three equal tenth shares thereof, and the said [E. F.] to the remaining one equal tenth share thereof; AND WHEREAS the said [A. B.] is desirous of introducing, pursuant to the provision in this behalf contained in the articles, the said [G. B.] as a partner into the said firm for the unexpired residue of the said term, and to assign to him one equal sixth part of the shares and interest of him the said [A. B.] in the capital of the partnership and profits of the said business, subject to the covenants, stipulations, and provisions herein contained. NOW THIS INDENTURE WITNESSETH, that for effectuating the said desire and in pursuance of the provision in this behalf con-

Parties.

Recitals: of title of partners t shares;

of desire of partner to introduce his son into firm.

(*b*) Stamp, 10*s.*, in respect of the assignment, and 10*s.* in respect of the covenants, &c. Stamp.

XII. Articles of Accession by Supplemental Deed.

tained in the articles, the said [A. B.], with the consent of the said [C. D.] and [E. F.], testified by their executing these presents, hereby introduces the said [G. B.] as a partner into the said firm upon the terms and subject to the covenants, stipulations, and provisions hereinafter contained; And the said [A. B.] hereby assigns unto the said [G. B.] one equal sixth part of the share and interest of him the said [A. B.] of and in the capital, stock-in-trade, goodwill, moneys, credits, and effects of the partnership, and in the profits henceforth to arise from the said business, To HOLD the same unto the said [G. B.] absolutely, subject, nevertheless, to the covenants, stipulations, and provisions hereinafter contained. AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, each of them the said [A. B.], [C. D.], [E. F.], and [G. B.], so far as the covenants, stipulations, and provisions herein contained are to be observed by him, his executors or administrators, hereby covenants with the others of them, jointly and severally, as follows, that is to say:—

1. They the said [A. B.], [C. D.], [E. F.], and [G. B.] shall, as from the date of these presents, be and continue partners in the said trade or business of —— for the unexpired residue of the said term of fourteen years, upon the terms and subject to the covenants, stipulations, and provisions contained in the articles, so far as applicable, and with such variations only as are rendered necessary by the introduction of the said [G. B.] as a partner, and the assignment to him of one equal sixth part of the share of the said [A. B.] as aforesaid; And will observe and perform all such last-mentioned covenants, stipulations, and provisions, with such variations as aforesaid, in the same manner as if the said [G. B.] had originally been a party to the articles, and the covenants, stipulations, and provisions herein contained had been originally contained in the articles.

2. [*Here insert, in successive paragraphs, any necessary variations as to capital, profits, weekly drawings, or other special provisions with regard to* [*G. B.*], *or his share in the partnership.*]

IN WITNESS, &c.

XIII. *DEED OF ASSIGNMENT (indorsed on or annexed to Articles of Partnership) by* ONE PARTNER, *with the consent of the others, of a* MOIETY *of his* SHARE *to a* THIRD PERSON, *who is* ADMITTED *into the* PARTNERSHIP. MUTUAL COVENANT *by the old Partners and new Partner to* PERFORM *the* ARTICLES.

THIS INDENTURE (*c*), made the —— day of ——, BETWEEN the within-named [*or* above-named] [A. B.], of the first part; the within-named [*or* above-named] [C. D.] and [E. F.], of the second part; and [G. H.], of, &c., the third part: WHEREAS the said [A. B.], [C. D.], and [E. F.], from the period of the date and execution of the within-written [*or* above-written] indenture down to the present time, have carried on the profession or business of solicitors in partnership, pursuant to the covenants and agreements contained in the within-written [*or* above-written] indenture: AND WHEREAS the said [A. B.], with the privity and consent of the said [C. D.] and [E. F.], has contracted with the said [G. H.] for the absolute sale to him of one moiety of his the said [A. B.'s] one-third share of and in the goodwill, property, and effects of the said partnership (except the credits thereof) for the price of £——; And it has been agreed that such moiety shall be assigned to and vested in the said [G. H.] in manner hereinafter expressed; and that the said several parties hereto shall enter into the covenants hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, and also in consideration of the sum of £—— now paid by the said [G. H.] to the said [A. B.], the receipt of which sum of £—— the said [A. B.] hereby acknowledges, the said [A. B.] (with the privity and consent of the said [C. D.] and [E. F.], testified by their severally executing these presents), assigns, and as beneficial owner conveys, unto the said [G. H.], his executors, administrators, and assigns, ALL THAT one undivided moiety or equal half part of the one-third part or share of him the said [A. B.] of and in the goodwill

Parties.

Recitals: of existing partnership;

of agreement for transfer.

(*c*) Stamp, *ad valorem*, as a conveyance by way of sale, in respect of the price of the share assigned and additional stamp of 10*s*. Stamp.

XIII. Transfer of Moiety of Share.

of the said partnership business, and the profits henceforth to arise therefrom, and of and in the capital, property, and effects of the said partnership (except the credits and sums of money owing to the said partnership, and all securities for the same); To HOLD the same unto the said [G. H.], his executors, administrators, and assigns absolutely: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and in consideration of the premises, they, the said [C. D.] and [E. F.], at the request of the said [A. B.], hereby admit the said [G. H.] into the said partnership established by the within-written [*or* above-written] indenture, as an acting partner therein, in respect of the one moiety hereby assigned of the one-third share of the said [A. B.] in the said partnership business as aforesaid; AND each of them the said [A. B.], [C. D.], [E. F.], and [G. H.], hereby covenants with the others and each other of them, that they the said [A. B.], [C. D.], [E. F.], and [G. H.], will henceforth become and continue partners in the profession or business of solicitors, for all the residue now unexpired of the said term of —— years mentioned in the within-written [*or* above-written] indenture, under and subject to the provisions and stipulations contained in the said indenture; and will at all times hereafter faithfully perform and observe all and every the covenants, provisoes, and agreements contained in the said indenture, so far as the same are now subsisting and capable of taking effect; and that the several rights, shares, and interests of the said respective parties, of and in the partnership property, profits, and effects, held and enjoyed by the said parties respectively, under and by virtue of the within-written [*or* above-written] indenture, and of these presents, or either of them, shall be subject and liable to the provisions of the said indenture, as fully and effectually, to all intents and purposes, as if the same had been incorporated with and inserted in these presents.

Further *testatum.*

IN WITNESS, &c.

XIV. *MEMORANDUM OF AGREEMEMT on* ADMISSION *into a Firm of a new* PARTNER *who brings in additional Capital (to be annexed to the Articles) (d).*

MEMORANDUM OF AGREEMENT (*e*), made the —— day of ——, 18—, BETWEEN the above-named [A. B.] and [C. D.] of the one part; and [E. F.] of, &c., of the other part: WHEREBY, in consideration of the sum of £——, now brought in and contributed by the said [E. F.] as additional capital of the above-mentioned partnership, it is hereby agreed as follows:— Parties.

1. THE parties hereto shall, as from the date hereof be and continue partners for the unexpired residue of the above-mentioned term, subject in all respects to the conditions, stipulations, and provisions of the above-written articles, so far as applicable, and except as varied by this present agreement. Agreement for partnership.

2. THE capital of the partnership shall be deemed to be the sum of £——, and to have been contributed by the parties hereto in the shares and proportions following, that is to say, two equal fifth shares by the said [A. B.], two other equal fifth shares by the said [C. D.], and the remaining one equal fifth share by the said [E. F.]. Capital.

3. THE profits and losses shall belong to and be borne by the parties hereto in proportion to their respective shares. Profits and losses.

4. THE said [A. B.] and [C. D.] may draw out of the profits the sums mentioned in the above-written articles; and the said [E. F.] may draw out of the profits money not exceeding £—— in each month. Monthly drawings.

5. [*Add any restriction as to the rights and powers of the new partner, or stipulation as to other matters, which may be agreed upon.*]

AS WITNESS, &c.

(*d*) This form may be adopted in simple cases where the articles of partnership are not under seal.

(*e*) Stamp, 6*d*. Stamp.

XV. *AGREEMENT for* ADMISSION *of an* ARTICLED CLERK *into* PARTNERSHIP *with a Solicitor on termination of the Articles of Clerkship:* COVENANTS *by Solicitor to carry on business, and to pay salary to Clerk meanwhile: And to repay* ADVANCE *made by Clerk on expiration of Clerkship, or on death of Clerk: On admission of Clerk into* PARTNERSHIP *the* ADVANCE *as to part, to be retained by Solicitor as* PREMIUM, *and, as to the remainder, to be the Clerk's* CONTRIBUTION *to* CAPITAL *of the firm* (*f*).

Parties.

Recitals: of articles of clerkship;

of advance of £—— by clerk to solicitor;

of agreement for admission of clerk into partnership.

Testatum.

Covenant by solicitor to admit clerk

THIS INDENTURE (*g*), made the —— day of ——, 18—, BETWEEN [A. B.], of, &c., of the one part; and [C. D.], of, &c., of the other part; WHEREAS the said [C. D.] has become bound to the said [A. B.] in his profession or business of a solicitor, as his articled clerk for the period of —— years, computed from the —— day of —— next, by articles dated the —— day of ——, 18—, without any consideration by way of premium: AND WHEREAS the said [C. D.] has this day advanced to the said [A. B.] the sum of £——, to be repaid with interest as hereafter provided, subject to the provisions hereinafter contained: AND WHEREAS in consideration of the premises the said [A. B.] has agreed to secure to the said [C. D.] such option as is hereafter mentioned of becoming a partner with the said [A. B.] in his profession or business of a solicitor, on equal terms with him as regards profits, in case at the expiration of the said articles of clerkship the said [A. B.] and [C. D.] shall both be living, and the said [C.D.] shall within —— calendar months thereafter qualify himself to practise as a solicitor. NOW THIS INDENTURE WITNESSETH, that in consideration of the premises the said [A. B.] hereby covenants with the said [C. D.] in manner

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(*f*) This precedent is from an MS. collection of precedents settled by the late eminent conveyancer, Mr. John Young Kemp, of Lincoln's Inn. It may be adapted to the case of a business other than that of a solicitor, if slightly altered; and it seems to afford a mode of framing an agreement for a future partnership which will be practically effectual, and which may be found convenient. See as to agreements for future partnerships, *ante*, p. 202.

Stamp.

(*g*) Stamp, *ad valorem*, as on a mortgage, in respect of the advance the repayment of which is secured by covenant: see, *ante*, tit. MORTGAGES, Vol. III., p. 988; and additional stamp of 10*s*.

XV. Agreement for Admission to Partnership.

following, that is to say, that, if the said [A. B.] and [C. D.] shall both be living at the time of the expiration of the said articles of clerkship, and the said [C. D.] shall within —— calendar months thereafter qualify himself to practise as a solicitor, and shall within such —— calendar months signify in writing to the said [A. B.] his wish to become a partner with him, he the said [A. B.] shall, and will admit the said [C. D.] into partnership with him as a solicitor, as from the time of the admission of the said [C. D.] as solicitor, for the period of —— years, to be computed therefrom, on equal terms in all respects as regards profits with him the said [A. B.], under the firm of [B.] and [D.]: AND FURTHER, that he the said [A. B.] shall, and will until the expiration of the said articles of clerkship, continue uninterruptedly to carry on his business as solicitor in —— aforesaid, or elsewhere, and that without taking any other person into partnership with him in respect of his said profession or business: AND FURTHER, that he the said [A. B.] shall, and will during the time the said [C. D.] shall continue articled to him the said [A. B.] as aforesaid, pay to him the said [C. D.] for his services as clerk the yearly salary of £—— by equal quarterly payments, and make the first of such quarterly payments on the —— day of ——, 18—. AND THIS INDENTURE FURTHER WITNESSETH, that for securing the said sum of £—— so lent and advanced by the said [C. D.] as aforesaid, subject to the provision hereinafter contained, he the said [A. B.] hereby covenants with the said [C. D.] that he the said [A. B.], his executors, administrators, and assigns shall, and will on the —— day of ——, 18— (*h*), pay the said sum of £—— to the said [C. D.], his executors or administrators, and shall, and will in the meantime pay unto him or them interest for the said sum of £——, at the rate of —— per cent. per annum, by equal —— yearly payments on the —— day of —— and the —— day of —— in every year, and make the first of such —— yearly payments on the —— day of —— next: PROVIDED ALWAYS, and it is hereby agreed and declared that if the said [C. D.] shall die before the —— day of ——, 18— (*h*), the said sum, or so much

into partnership at the expiration of his clerkship;

to carry on the business in the meantime, and not admit any other person into partnership;

to pay salary to clerk in the meantime.

Second *testatum*.

Covenant by solicitor to repay the advance, with interest, on a fixed date.

Proviso that in case of death of clerk before the time fixed for payment, the advance shall be payable immediately.

(*h*) This date will be the day of the expiration of the Articles of Clerkship.

XV. Agreement for Admission to Partnership.

thereof as (having regard to the provision next hereinafter contained, or any payments which may have been made on account) shall then remain due, with interest to the time of his death, shall thereupon immediately become payable: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said [C. D.] shall exercise the option hereby secured to him of becoming a partner with the said [A. B.], the sum of £——, part of the said sum of £——, shall be retained by the said [A. B.] as a premium from the said [C. D.] for all the goodwill of the said [A. B.] in his said profession or business, and the remainder of the said sum of £—— shall become the capital of the said [C. D.] in the business to be carried on by the said [A. B.] and [C. D.] in partnership: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said [C. D.] shall so qualify himself to practise and signify his wish to become a partner as aforesaid, then a proper deed or instrument in writing shall be prepared as soon as conveniently may be thereafter at the joint expense of the parties hereto, whereby it shall, amongst other things, be provided as follows, that is to say: that, &c. [*Here set out shortly any special covenants and conditions which may be intended to regulate the partnership, and not usual, nor necessarily implied by a partnership contract*]: And it shall be thereby also provided that all disputes between the parties hereto relating to the partnership shall be submitted to arbitration in the usual manner: And there shall be inserted therein all other such covenants, stipulations, and provisions as are usual in articles of partnership of a like nature.

Proviso that if clerk shall elect to become a partner part of the advance shall be retained by solicitor as premium and the remainder shall be the clerk's contribution to capital.

Articles of partnership to be prepared on admission of clerk.

IN WITNESS, &c.

XVI. *DEED POLL for* Extending *the* Term *of a* Partnership *to be* Indorsed *upon or* Appended *to the* Articles *of* Partnership; Variations *where the original* Articles *are* altered.

Commencement.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*i*) the within-named [*or* above-named] [A. B.], [C. D.], and [E. F.] send greeting: Whereas the term of seven years which was prescribed by the within-written [*or* above-written] indenture for the continuance of the partnership thereby agreed to be entered into by and between the said parties, will expire on the —— day of —— next: But the said parties have agreed to continue partners in the within-mentioned trade or business henceforth for the further period of seven years, upon the same terms and conditions as are within expressed of and concerning the said partnership thereby created (*k*): NOW THESE PRESENTS WITNESS, that each of them the said [A. B.], [C. D.], and [E. F.], doth hereby covenant with the others of them, jointly and severally, in manner following, (that is to say): That they the said [A. B.], [C. D.], and [E. F.], will remain and continue partners together in the said trade or business for the further term of seven years to be computed from the said —— day of —— next, if they or any two of them shall so long live, upon such and the same terms and conditions, and with, under and subject to such and the same covenants, provisoes, and agreements as are within [*or* above] expressed and contained, of and concerning the within-mentioned [*or* above-mentioned] partnership, for the original term of seven years, and to which the said parties hereto, their respective heirs, executors, and administrators would have been subject or liable, if the within-written [*or* above-written] indenture, and the partnership thereby created, and the several covenants, declarations, provisoes, and agreements therein mentioned and contained had been made or

Recital: of expiration of partnership term and agreement to continue partners.

Testatum.

Mutual covenants to continue partnership and perform covenants, &c., as within.

(*i*) Stamp, 10*s*. Stamp.

(*k*) If any of the provisions are to be altered, add—

"except in respect of the particulars hereinafter mentioned or referred to." Variation, where new terms are added.

XVI. Deed Poll for Extending Term of Partnership.

entered into for the term of fourteen years instead of the term of seven years (*l*).

In witness, &c.

XVII. *DEED OF DISSOLUTION OF PARTNERSHIP (to be annexed to the Articles) between three persons, where the* Business *is to be* Wound Up *and* Discontinued, *and the* Assets *divided between the partners.*

Parties.

THIS INDENTURE (*m*) made the —— day of ——, 18—, Between the above-named [A. B.] of the first part; the above-named [C. D.] of the second part; and the above-named [E. F.] of the third part: Whereas the parties hereto have from the date of the above-written indenture to the present time carried on the above-mentioned trade or business of —— in partnership pursuant to the covenants, stipulations and provisions contained in the same indenture:

Recitals: of continuance in partnership under articles;

of agreement

And whereas it has been agreed that the partnership between

(*l*) Add, if so intended—

Extinction of power to determine partnership on notice.

"Provided always, and it is hereby agreed [*here insert any modifications as to the terms of the partnership, e.g.*] that the power of determining the partnership at any time during the continuance thereof, on giving six calendar months' previous notice, within limited and reserved to the said [A. B.], shall no longer exist, but be entirely extinguished."

Sleeping partner.

Or, "that the said [A. B.] shall not henceforth be required to, and shall not interfere in the carrying on, management, or conduct of the business of the partnership, according to the covenant in that behalf contained in the within-written [*or* above-written] indenture, and shall not sign the name of the firm to any cheques, bills, or other writings; nor, without the consent of the said [C. D.] and [E. F.], employ any of the money or effects of the partnership, nor in any way pledge the credit thereof (*or otherwise, as the case may be*)."

(*m*) Stamp, 10*s.*; but see note (*n*).

XVII. Deed of Dissolution on Winding up of Business.

them shall be dissolved, and the said trade or business shall be discontinued and wound up, and the stock in trade, assets, and credits thereof shall be realised and got in, and the net proceeds after payment and satisfaction of all debts and liabilities of the partnership, and other payments and deductions hereinafter mentioned, shall be divided between the parties in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement it is hereby declared and agreed by and between the parties hereto as follows, that is to say:

for dissolution of partnership, and discontinuance of business.

Testatum.

1. The said partnership between the parties hereto shall be determined, and stand dissolved as from the —— day of —— next.

Dissolution of partnership.

2. The parties hereto shall on the —— day of —— next sign notices of the dissolution, and forthwith advertise the same in the London Gazette; and shall also sign a notice to be given to the landlord of the above-mentioned business premises of the firm, to determine the tenancy thereof on the —— day of ——, 18—.

Advertisement of dissolution, &c.

3. Within —— days after the dissolution of the partnership, a full and general account and balance-sheet shall be taken and made of the property, assets, and liabilities of the partnership; and a full and particular inventory and valuation of all the machinery, plant, tools, utensils, stock-in-trade, materials and effects belonging to the firm shall be made by Mr. [*valuer*], of, &c., or such other person or persons as the parties hereto shall agree upon for that purpose; and all debts owing to the firm shall be collected and got in by Mr. [*receiver*], of, &c. (*n*), or such other person or persons as the parties hereto shall jointly appoint for that purpose.

Final general account and valuation to be taken, and debts got in.

4. The cash balances which shall on the said —— day of

Application of cash in hands

(*n*) An appointment of the receiver may be here inserted, if desired, as follows:—

Appointment of receiver, and power of attorney.

"And the parties hereto accordingly appoint the said [*receiver*], as from the said —— day of —— next, to be such receiver, and to be the lawful attorney of them and each of them, in their or his names or name or otherwise, and on their behalf, and at their cost, to demand, call in, recover, and receive from all persons whom it may concern, all and singular the debts and moneys which on and after that day shall be owing to the parties hereto on account or in respect

XVII. **Deed of Dissolution on Winding up of Business.**

of partners, &c., and moneys got in.

—— next, be in the hands of the parties hereto, or any of them, or of the bankers of the partnership, and the moneys which shall arise from such collection and getting in of debts due to the firm as aforesaid, shall be applied in or towards payment and discharge of all the debts and liabilities of the partnership, and of the costs and expenses of and incident to such collection and valuation as aforesaid respectively, and in the next place in payment to each of the parties hereto of any unpaid profits due to him and in repayment of his share of capital, and the residue (if any) shall be divided between the parties hereto in proportion to their respective shares in the capital, after making all proper deductions and allowances [*or as may be otherwise intended*].

If cash and moneys got in are insufficient, partnership plant, stock, &c., to be sold.

5. If the said cash balances, and the moneys to be so collected and got in as aforesaid, shall not be sufficient to pay and discharge all the debts and liabilities of the partnership, and such costs and expenses, and profits, and repayments of capital as aforesaid respectively, then the machinery, plant, and other effects of the partnership hereinbefore mentioned and to be valued as hereinbefore provided, or such part thereof respectively as shall be sufficient for such several payments and repayments of capital aforesaid, and the payment of the costs and expenses incident to the sale thereof, shall be sold, either together or in parcels, and either by contract or by public auction; and the proceeds of such sale or sales shall be applied in the manner hereinbefore provided of and concerning the said cash balances and the moneys so to be collected and got in as aforesaid.

If total amount realized is insufficient for payment in full, capital to be repaid rateably.

6. If the total amount of the said cash balances and of the moneys so to be got in and collected as aforesaid, and of the proceeds of such sale or sales (if any) as aforesaid shall not be sufficient after the payment and satisfaction of all the debts and liabilities of the partnership, and of all such costs and expenses as aforesaid, and of such unpaid profits as aforesaid, to repay to the parties hereto their respective shares of

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of the said business, and to give effectual receipts and discharges for such debts and monies respectively."

But it seems better that the appointment should be effected, and the power given, by a separate instrument, which may be retained by the receiver as his authority. If the appointment is effected by this deed an additional stamp of 10*s.* will be required.

capital in full, then such shares shall be repaid rateably, so far as such total amount shall extend, and neither of the parties hereto shall have any claim against the others or other of them in respect of the deficiency.

Plant, stock, &c., unsold to be divided among partners in *specie*.

7. If the said total amount shall be more than sufficient for the payment and discharge of all such debts, liabilities, costs, expenses, and unpaid profits as aforesaid, and for repayment in full of the said capital, then the machinery, plant, and other effects aforesaid, or such part thereof as shall remain unsold, shall be equally divided between the parties hereto according to the said inventory and valuation in manner following, that is to say: the parties hereto shall draw lots for priority of selection of the articles mentioned in such inventory and valuation, and remaining unsold, and shall alternately, according to the priority so determined, select one article therein mentioned in succession until each of the parties hereto shall have selected a number of articles, in proportion, according to the said valuation thereof, to his share in the capital of the partnership, or as near thereto as may be; and in case such proportion shall unavoidably be exceeded by any of the parties hereto, he shall pay to the others or other of them such sums or sum as the case may require, for equality or adjustment of partition.

Debts outstanding to be sold to the highest bidder.

8. All debts owing to the partnership which shall not be got in before the —— day of ——, 18—, shall then be sold and disposed of in one lot to such one of the parties hereto as shall be willing to purchase the same, and shall offer the largest price for the same, and in case of an equality of bidding, the preference shall be determined by lot: And upon payment by the purchaser to the said receiver, or such other receiver or receivers as aforesaid of the purchase-money, for the benefit of the parties hereto, and to be applied in manner hereinbefore directed of and concerning the said cash balances and moneys to be got in and collected as aforesaid, the others or other of them shall on the request, and at the cost of the purchaser, execute and do all such assurances, acts, and things as may be necessary or proper for enabling the purchaser or his representatives to collect and get in, recover, receive, and give receipts for the outstanding debts so purchased by him as aforesaid.

Agreement for mutual releases.

9. Each of the parties hereto shall, so soon as the others or any other of them, or their or his representatives, shall have

XVII. Deed of Dissolution on Winding up of Business.

executed and done all the assurances, acts, and things hereby agreed to be done by them respectively, and at the request and cost of such others or other, or their or his representatives, execute to them or him such releases, indemnities, and assurances as may be reasonable and proper.

Costs.

10. EXCEPT as is herein otherwise provided, the costs of and incident to the preparation and execution of these presents, and the carrying of the same into effect, shall be borne and paid by the parties hereto in proportion to their respective shares in the capital of the partnership.

IN WITNESS, &c.

XVIII. *DEED OF DISSOLUTION OF PARTNERSHIP between two, where one Partner pays to the other a* SUM *of* MONEY *in lieu of his Share of the* STOCK IN TRADE, *&c.* ASSIGNMENT *of* SHARE. *Mutual* RELEASE, *and* ORDINARY COVENANTS. COVENANT *by* RETIRING PARTNER NOT *to* EXERCISE *the same* TRADE, *&c.*

THIS INDENTURE (*o*), made the —— day of ——,

Parties.

BETWEEN [A. B.], of, &c., of the one part; and [C. D.], of,

Recitals:

&c., of the other part: WHEREAS the said [A. B.] and [C. D.]

Stamp.

(*o*) It seems clear that this deed is chargeable with an *ad valorem* duty as a conveyance on sale, in respect of the sum paid as the price of the outgoing partner's share; see *Potter* v. *Commissioners of Inland Revenue*, 23 L. J. Ex. 345; *Christie* v. *Commissioners of Inland Revenue*, L. R. 2 Ex. 46; *Phillips* v. *Commissioners of Inland Revenue*, *ibid.* 399. Where the amount so chargeable would be considerable, the liability is often avoided altogether, or partially, by dispensing with a formal assignment of the partnership property and assets (except as regards land or houses, fixtures, goodwill, and other matters which can only pass by assignment), and defining the right to the property and the consideration to be paid to the outgoing partner for relinquishing his interest by way of agreement. The framing of such an instrument is, however, a matter of some nicety, in order to prevent it from operating as an assignment so as to be liable to the duty. For the form of such a dissolution deed, see *post*, Precedent XX., p. 497.

This deed will also require an additional stamp of 10*s*.

XVIII. **Deed of Dissolution, with Ordinary Clauses.**

have for some time carried on the trade or business of —— in partnership, and are interested therein in equal shares, but the said partnership is not regulated by any articles or agreement in writing: AND WHEREAS the said [A. B.] and [C. D.] have agreed to dissolve the said partnership as from the day of the date hereof: AND WHEREAS upon the treaty for the said dissolution of partnership, it was agreed that the said [C. D.] (who intends to carry on the said trade or business alone), should take over all the share of him the said [A. B.] in the stock in trade, goodwill, credits, and effects of the said partnership, and that such share should be assigned to the said [C. D.] accordingly, on his taking upon himself all the debts and liabilities of the partnership which should be outstanding on the day of the date hereof, and paying to the said [A. B.] the ascertained net value of his share and interest in the stock in trade, goodwill, assets, and credits of the partnership, as it should stand on the day of the date hereof: AND WHEREAS the said parties hereto have this day stated and settled a final account and valuation of all the stock in trade, goodwill, assets, credits, and effects of the partnership, and of the outstanding debts and liabilities thereof, whereby it appears that the net value of the share of the said [A. B.] amounts to the sum of £——. AND WHEREAS it has been agreed that the said sum of £—— shall be paid to the said [A. B.] by three equal instalments of £—— each, the first to be paid on the —— day of —— next ensuing, the second on the —— day of —— then next following, and the third and last on the —— day of ——, 18—, with interest thereon at the rate of —— per cent. per annum, to be secured by the joint and several bond of the said [C. D.], and of [*surety*] as his surety: AND WHEREAS in pursuance of the said agreement the said [C. D.] and [*surety*] as his surety have by their bond, bearing even date with these presents, become bound unto the said [A. B.] in the penal sum of £——, for the payment by the said [C. D.] or [*surety*], or either of them, or their or his heirs, executors, or administrators unto the said [A. B.], his executors, administrators, or assigns of the said sum of £——, by such instalments and with such interest as aforesaid. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, the said [A. B.] and [C. D.] hereby declare that the said partnership shall be determined, and stand dissolved as from the day of

of partnership by parol;

of agreement for dissolution;

of agreement for continuance of business by one of the partners;

of final amount and valuation;

of agreement as to mode of payment of purchase-money;

of bond to secure payment of purchase-money by instalments.

Testatum.

Dissolution of partnership.

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the date hereof; AND IT IS HEREBY AGREED that the dissolution of the said partnership shall be forthwith advertised in the London Gazette, and notice thereof shall be forthwith given by circular to every person and firm with whom the parties hereto have had dealings since the 31st day of December, 18—; and that such advertisement and every such circular shall state that the said business will henceforth be carried on by the said [C. D.] alone. AND each of them the said [A. B.] and [C. D.] hereby releases and discharges the other of them, his heirs, executors, administrators, and assigns, from all actions, proceedings, claims, and demands, which either of them the said parties, his heirs, executors, or administrators now has, or hereafter might have had, against the other of them, his heirs, executors, or administrators, by reason of the said partnership, or of any thing in relation thereto; but so, nevertheless, as not to prejudice or affect the covenants or provisions herein contained, or the rights and remedies of the parties hereto respectively, and their respective heirs, executors, administrators, or assigns hereunder. AND THIS INDENTURE ALSO WITNESSETH, that, in further performance of the above recited agreement, and in consideration of the sum of £—— now paid by the said [C. D.] to the said [A. B.], the receipt whereof is hereby acknowledged [*or* the payment whereof in manner hereinbefore mentioned, is so secured as aforesaid], the said [A. B.] hereby assigns (*p*), unto the said [C. D.], his executors, administrators, and assigns, ALL the moiety or one half part of him the said [A. B.], of and in all and singular the goods, wares, stock in trade, credits, and effects belonging, due, and owing to them the said [A. B.] and [C. D.], as partners aforesaid: TO HAVE, RECEIVE, AND TAKE the same moiety, and other the premises hereby assigned, unto the said [C. D.], his executors, administrators, and assigns, absolutely; And for the consideration aforesaid, and for the more effectually enabling the said [C. D.], his executors, administrators, and assigns, to receive and recover the said several credits

Advertisement and notices of dissolution.

Mutual release.

Further *testatum.*

Assignment of share.

Habendum.

Power of attorney.

(*p*) If desired, the words "and as beneficial owner conveys," may be here added, in which case the covenants against incumbrances and for further assurance (*post*) will be omitted, but it has hitherto been a frequent practice not to insert full covenants for title in assignments of shares on dissolution of partnership.

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and effects of the said partnership, he the said [A. B.] hereby irrevocably (*q*) appoints the said [C. D.], his executors or administrators, his lawful attorney and attorneys, in the joint names of the said [A. B.] and [C. D.], or otherwise, but for the exclusive benefit, and at the cost and risk of the said [C. D.], his executors or administrators, to demand, call in, and receive from all persons whom it may concern, all and singular the credits, moneys, and effects of the said partnership, and to give effectual receipts and discharges for the same respectively, and to use all such remedies or proceedings for recovering and getting in the said credits and effects respectively as may be deemed expedient; and for all or any of the purposes aforesaid, from time to time to appoint a substitute or substitutes, and such substitution at pleasure to revoke; and generally to do whatsoever shall be requisite for giving to the said [C. D.], his executors or administrators, the full benefit of the assignment hereby made (*r*): And the said [A. B.] hereby covenants with the said [C. D.] in manner following (that is to say), that he the said [A. B.] has not at any time heretofore contracted any debt or obligation which can or may charge or affect the said [C. D.], his executors or administrators, or the assets or effects of the said partnership, or any part thereof; nor received or discharged any of the credits of the said partnership, except as appears by the books of the said partnership; nor done any act whereby the share and premises hereby assigned, or any part thereof, may be charged or incumbered in any manner howsoever; And that he the said [A. B.], his executors or administrators, will at all times hereafter, on the request and at the costs of the said [C. D.], his executors, administrators, or assigns, make, do, and execute

Covenant by retiring partner that he has not contracted debts, &c.

Nor incumbered.

For further assurance.

(*q*) An appointment of an attorney for valuable consideration may now be made irrevocable: see sect. 8 of the Conveyancing Act, 1882 (46 & 47 Vict. c. 39), set out *post*, sub tit. Powers of Attorney. The covenant not to revoke the appointment, which was formerly usual, is therefore omitted.

(*r*) Where the retiring partner assigns his share, it may frequently be advisable to insert a power of attorney, notwithstanding that an assignment of a debt, of which notice in writing has been given to the debtor, passes the right to the debt, and all remedies, and power to give a discharge for the same, without the convenience of the assignor; for it may prove in some cases difficult to give the required notice: see sect. 25 (6) of the Judicature Act, 1873 (36 & 37 Vict. c. 66), set out *post*, sub tit. Powers of Attorney.

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every such further assurance, act, or thing whatsoever, for the more effectually vesting in the said [C. D.], his executors, administrators, or assigns, the premises hereby assigned, and every part thereof, and enabling him and them to receive the same, as shall be reasonably required; And that he the said [A. B.], his executors or administrators, will not at any time hereafter receive, compound, or discharge any of the goods, credits, or effects, one moiety whereof is intended to be hereby assigned, and will not release, disavow, or become nonsuit in any action or proceeding which may be brought by the said [C. D.], his executors or administrators, by virtue of the said power, or do any other act or thing in derogation of the assignment hereby made, or the powers or authorities hereby given; And the said [C. D.] hereby covenants with the said [A. B.] that he the said [C. D.], his heirs, executors, or administrators, will, within —— calendar months from the date hereof, pay and discharge all the debts and liabilities of the said partnership; and will at all times hereafter effectually keep indemnified the said [A. B.], his heirs, executors, and administrators, and his and their estate and effects, against all actions, proceedings, costs, damages, expenses, claims, and demands in respect thereof, and also against all costs, damages, and expenses by reason of any action or proceeding which may be brought or instituted by the said [C. D.], his executors or administrators, in the name or names of the said [A. B.], his executors or administrators, by virtue of the power or authority hereinbefore contained, or of any act, matter, or thing in relation thereto; And in consideration of the premises, he the said [A. B.], hereby covenants with the said [C. D.], that he the said [A. B.] will not at any time within —— years from the date of these presents, either alone or jointly with or as agent or manager for any person or persons whomsoever, either directly or indirectly, exercise, carry on, or be concerned or interested in the trade or business of ——, or any branch thereof, within the distance of —— miles from —— aforesaid (*s*); and will not nor shall divulge or make known to any person or persons whomsoever any of the secrets, accounts, or transactions of or relating to or concerning the said partnership so heretofore carried on between them the said [A. B.]

Not to receive or release debts.

Covenants by continuing partner to pay debts, and for indemnity.

Covenant by [A. B.] not to exercise the trade, or disclose secrets.

(*s*) As to the mode of computing distance in the construction of covenants of this nature, see *ante*, Vol. II. p. 333.

and [C. D.] as aforesaid; And if the said [A. B.] shall do any act in breach of this present covenant, then that he the said [A. B.] shall immediately thereupon pay to the said [C. D.], his executors or administrators, the sum of £——, as liquidated damages, and in total extinction of the same covenant (*t*).

In witness, &c.

XIX. *DEED OF DISSOLUTION OF PARTNERSHIP between three, where one Partner retires and receives a* Sum *of* Money *(secured by the promissory notes of the continuing partners) in lieu of his* Share—Assignment *of* Share—Variation *where* Leaseholds *are* Assigned *by a* Separate Deed (*u*).

THIS INDENTURE (*x*) made the —— day of ——, 18—, Between [A. B.] of, &c., of the one part; and [C. D.] of, Parties.

(*t*) Where a person purchases a share in or the entirety of a business, from a retiring partner or any other person, it is important that the extent of the obligation, if any, intended to be imposed upon the vendor not to exercise the business, should be explicitly defined, as the point occasions much dispute, and it is by no means well settled how far such an obligation is incident to the contract itself. See *ante*, Vol. II., p. 338 *et seq.* As to contracts not to carry on a business.

Where it is intended that the vendor of the good-will of a business shall not be restrained from carrying it on, it is better expressly to negative the implication of any such restriction by such a clause as the following:

"Provided always, and it is hereby declared, that nothing herein contained shall extend or be construed to extend to prevent or restrain the said [*vendor*] from setting up or exercising the trade or business of a —— at any place or places, and in any manner that he shall think proper." Vendor to be at liberty to exercise the trade on his own account.

(*u*) It will generally be advisable that where part of the property of a partnership consists of lands or buildings the share of a retiring or deceased partner in such property should be conveyed or assigned by a separate deed, so as to keep the fact that it is partnership property off the title.

(*x*) As to stamp, see *ante*, p. 488, note (*o*).

XIX. **Deed of Dissolution and Assignment of Share.**

&c., and [E. F.] of, &c., of the other part: WHEREAS the parties hereto have for some time carried on the trade or business of —— in partnership, under articles of partnership dated the —— day of ——, 18—, whereby they are interested in the partnership property in equal shares: AND WHEREAS the said parties hereto are possessed, as part of the partnership property of the several leasehold properties specified in the Schedule hereunder written and of certain fixed and movable machinery, fixtures, and plant; and the partnership property also includes the moneys, stock-in-trade, materials, good-will and effects used in or belonging to, and of debts owing to the parties hereto, as such partners as aforesaid; AND WHEREAS the said parties hereto have agreed to dissolve the said partnership, so far as relates to the said [A. B.], as from the —— day of —— next, and notice of such dissolution has been signed by them respectively in order to its being inserted in the London Gazette; and it has been agreed that the said trade or business shall as from and after that day be carried on by the said [C. D.] and [E. F.] in partnership without the said [A. B.]; and that they shall have for their own use and benefit all the third equal part or share and interest of the said [A. B.] of and in the said business and the partnership property aforesaid; and that they the said [C. D.] and [E. F.] shall take upon themselves all the debts and liabilities of the partnership which were outstanding on the said —— day of ——, 18—, and shall pay to the said [A. B.] the net value of his share as it stood on that day: AND WHEREAS a general account and valuation have been taken and made of the property, assets, and goodwill, and liabilities of the partnership, whereby it appears that the net value of the share of the said [A. B.], as it stood on that day, after providing for the liabilities of the partnership then outstanding is of the sum of £——, and it has been agreed that the payment thereof by such instalments as are hereinafter mentioned shall be secured by the promissory notes of the said [C. D.] and [E. F.] in manner hereinafter appearing; and that thereupon the said [A. B.] shall assign to the said [C. D.] and [E. F.] all the share and interest of him the said [A. B.] of and in the property, assets, and goodwill of the partnership: [AND WHEREAS for the purposes of the Stamp Act it has been agreed that the said sum of £—— shall be apportioned, and that the sum of £—— part thereof

Recitals:

of partnership under articles;

of nature of partnership property;

of agreement for dissolution and assignment of share of retiring partner to continuing partners.

of apportionment of purchase-money of retiring

XIX. **Deed of Dissolution and Assignment of Share.**

shall be taken to be the value of the share of the said [A. B.] in the said leasehold premises, and that the sum of £——, the residue of the said sum of £——, shall be taken to be the value of the share of the said [A. B.] in the residue of the partnership property, assets, and good-will]. AND WHEREAS the said [C. D.] and [E. F.] have also agreed to indemnify the said [A. B.] against the debts and liabilities due or owing from the partnership in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that, in pursuance and part performance of the hereinbefore recited agreements, and in consideration of the premises, they the said parties hereto hereby declare that the said partnership between them shall be determined and stand dissolved as from the said —— day of ——, 18—, and that the same and the hereinbefore mentioned articles of partnership and every clause and thing therein contained shall henceforth cease and be void. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance and further performance of the hereinbefore mentioned agreements, and in consideration of the sum of £—— [being the apportioned part of the said sum of £—— so agreed to be paid to the said [A. B.] for or in respect of the property (other than the said leasehold premises), assets, and good-will of the said business (*z*)] to the said [A. B.] now paid, or to the satisfaction of the said [A. B.] secured to be paid to him by the said [C. D.] and [E. F.] by three several promissory notes, under their hands, and respectively bearing even dates with these presents, for the payment of the sum of £—— each (making together the said aggregate sum of £——), the first of such promissory notes becoming due at the expiration of two calendar months, the second at the expiration of four calendar months, and the third at the expiration of six calendar months next after the date of these presents, (the receipt of which three several promissory notes the said [A. B.] hereby acknowledges), he the said [A. B.] assigns and transfers unto the said [C. D.] and [E. F.], their executors, administrators, and assigns, ALL THAT the one equal

partner's share for stamp duty (*y*);

of agreement for indemnity.

Testatum.

Dissolution of partnership.

Second *testatum.*

In consideration of certain promissory notes given by the continuing partners, the retiring partner assigns to them his share in the partnership property.

(*y*) This recital will be inserted where it is intended to assign the leaseholds by a separate deed. Variation.

(*z*) These words in brackets will, of course, be inserted only where the leaseholds are to be assigned by a separate deed. Variation.

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undivided third part or share, and all other the part, share, and interest of him the said [A. B.], of and in all [and singular the several leasehold premises specified in the said Schedule hereunder written, and of, and in all (*a*)] the fixed and movable engines and machinery, plant, moneys, stock in trade, contracts, goodwill, profits, effects, property, matters, and things of the said partnership, or of them the said parties hereto, by virtue thereof, and also of and in all and every such credits and sums of money as are now outstanding, due, or owing to them the said parties hereto on account of their said partnership; To HAVE, RECEIVE AND TAKE the premises hereby assigned unto the said [C. D.] and [E. F.], their executors, administrators, and assigns, for their own absolute use and benefit; absolutely discharged from any lien or claim in respect of the three several promissory notes hereinbefore mentioned, or any of them; AND for the consideration aforesaid, &c. [*power of attorney, ut ante, p.* 490, *mutatis mutandis*]: AND the said [A. B.] hereby covenants with the said [C. D.] and [E. F.] in manner following, that is to say [*Covenants by retiring partner that he has not contracted any debts, nor incumbered his share; for further assurance; and not to receive or release debts, &c., ut ante*, pp. 491, 492, *mutatis mutandis*]; AND in further pursuance and performance of the hereinbefore recited agreement, and in consideration of the premises, they, the said [C. D.] and [E. F.], do hereby jointly and severally covenant with the said [A. B.], that they the said [C. D.] and [E. F.], or one of them, or the heirs, executors, or administrators of them or one of them will, &c. [*Covenants by continuing partners to pay and discharge the partnership debts and liabilities*, "including the rents and covenants to be paid, observed, and performed respectively in respect of the said leasehold premises," *and to indemnify the retiring partner therefrom, ut ante*, p. 492, *mutatis mutandis*]. AND THIS INDENTURE LASTLY WITNESSETH, that in further pursuance and performance of the hereinbefore recited agreement, and in consideration of the premises, each of them the said [C. D.] and [E. F.], hereby releases and discharges the said [A. B.], his heirs, executors, administrators, and assigns; and he the said [A. B.] hereby releases and discharges the

Habendum.

Power of attorney.

Covenants by retiring partner.

Joint and several covenant by continuing partners to pay the debts of the partnership.

Third *testatum.*

Mutual release.

Variation.

(*a*) These words in brackets will, of course, be omitted if the leaseholds are to be assigned by a separate deed.

said [C. D.] and [E. F.], and each of them, and the heirs, executors, administrators, and assigns of them, and of each of them (*b*) (but subject and without prejudice to the covenants contained in these presents), from all actions, proceedings, claims, and demands, which they the said releasing parties respectively, or either of them, or their or his executors or administrators, now have or has, or hereafter have, against the others or other of them, their or his executors or administrators, by reason of the above-recited partnership, or any other matter or thing relating thereto.

XIX. **Deed of Dissolution, and Assignment of Share.**

In witness, &c.

The Schedule above referred to.

XX. *DEED executed on the* Dissolution *of a* Partnership *(indorsed on the Articles) by effluxion of time where one* Partner *takes all plant, stock in trade, credits, and effects, and a formal* Assignment *thereof is* Dispensed with *to save* Stamp Duty (*c*).

THIS INDENTURE (*d*), made the —— day of ——, 18—, Between the within-named [A. B.] of the one part, Parties.

(*b*) In the draft from which this precedent was taken, each of the partners released to the other and others; but it is obvious that this was incorrect, as no release was intended to be given between the continuing partners.

(*c*) In this case the goodwill is presumed to be of little or no value, and the other property of the partnership consists only of chattels which pass by delivery, and book debts. The precedent in the text comprises all that is absolutely requisite to carry into effect an arrangement of this nature; for the assignment and power of attorney usually executed by the selling to the purchasing partner are not essential in order to vest the property in the latter. The plant, stock in trade, and other personal chattels, susceptible of manual delivery, pass by such delivery; and an assignment of the debts and the power of attorney authorizing the

Remarks upon the precedent in the text.

For note (*d*) see next page.

XX. **Deed of Dissolution without Assignment, on Retirement of Partner.**

and the within-named [C. D.] of the other part: WHEREAS the partnership between the said [A. B.] and [C. D.], constituted by the within-written articles, was this day dissolved by effluxion of time, and notice of the dissolution thereof has been signed by the said [A. B.] and [C. D.] respectively, in order to its being inserted in the London Gazette at the sole cost of the said [C. D.]; AND WHEREAS it has been arranged and agreed between the parties hereto, that the within-mentioned trade or business shall henceforth be carried on by the said [C. D.] without the said [A. B.], and that the said [C. D.] shall take and receive all the plant, stock in trade, materials, credits, and effects hitherto the property of the partnership, and shall also take upon himself all the subsisting debts and liabilities of the said partnership; and that the said [A. B.] shall accept in full satisfaction of his share and interest in the said partnership property the sum of £——, to be paid by three equal instalments, the first of such instalments to be paid on or before the execution of these presents, and the remaining two instalments to be paid at the end of six and twelve calendar months from the date of these presents respectively, with interest on the said instalments from the date of these presents until payment thereof respectively, at the rate of 5 per cent. per annum, to be secured by the joint and several bond of the said [C. D.] and [*surety*], of &c., as his surety, which bond, it was agreed, should also indemnify the said [A. B.] against the subsisting debts and liabilities of the said partnership: AND WHEREAS, in pursuance of the said agreement, the said [C. D.] has this day paid to the said [A. B.] the sum of £—— (the receipt whereof is hereby acknowledged), being the first instalment of the said sum of

Recitals:

of dissolution of partnership by effluxion of time;

of agreement for continuance of business by one of the partners, and purchase by him of the partnership property;

of payment of part of purchase-money and bond to secure remaining instalments, and indemnity (*e*);

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continuing partner to receive and recover them, may be dispensed with, since the individual members of a dissolved firm are as competent to receive and give discharge for the joint credits as actual partners. All, therefore, that the purchaser wants is evidence that the effects, of which he has been put in possession, and the credits which he is to receive, are to become his exclusive property; and that he should be protected by express covenant against any infringement of or interference with the rights incident to such property.

(*d*) It is conceived that this deed will require only a deed stamp of 10*s.*: see *ante*, p. 488, note (*o*).

(*e*) For a form of bond for securing instalments of purchase-money of an outgoing partner's share and indemnifying him against liabilities of the partnership, see *post*, Precedent XXIII., p 506.

£——, and the said [C. D.] and the said [*surety*] as his surety have by their bond, bearing even date with these presents, become bound to the said [A. B.] in the penal sum of £——, conditioned for the payment by the said [C. D.] and [*surety*], or one of them, or the heirs, executors, or administrators of them, or one of them, to the said [A. B.], his executors, administrators, or assigns, of the two remaining instalments of the said sum of £——, at such respective times and with such interest as aforesaid, and for the indemnification by the said [C. D.] and [*surety*] of the said [A. B.], his heirs, executors, administrators, estate and effects, against the said debts and liabilities of the partnership, and all claims and demands in respect thereof: AND WHEREAS, in further pursuance of the said agreement, all the plant, utensils, stock in trade, materials, and other personal chattels of the partnership, have been delivered to and are now held by the said [C. D.] for his own use and benefit and in his sole possession, exclusive of the said [A. B.]: AND WHEREAS the debts owing to the said partnership have in part been and the remainder thereof are intended, as soon as conveniently may be, to be collected, got in, and received by the said [C. D.] for his own benefit, exclusive of the said [A. B.]: AND WHEREAS as part of the said arrangement it was also agreed that the said [A. B.] should enter into the covenants on his part, and execute to the said [C. D.] such release, as are hereinafter contained respectively. NOW THIS INDENTURE WITNESSETH, that, in consideration of the premises, he the said [A. B.] hereby covenants with the said [C. D.], that he the said [A. B.] has now full power and right to sell and dispose of his share and interest in the said partnership, plant, utensils, stock in trade, materials, credits, and effects, free from all charges or incumbrances whatsoever created or suffered by him the said [A. B.], and that he the said [A. B.] has not heretofore received or discharged any of the said partnership credits, except such as appear by the partnership books to have been received or discharged; and that it shall be lawful for the said [C. D.], his executors, administrators, or assigns, henceforth to have, receive, take, and enjoy the said share and interest of him the said [A. B.], of and in the said plant, utensils, stock in trade, materials, credits, and effects belonging to the said late partnership, to and for his and their own exclusive use and benefit, without any inter-

XX. **Deed of Dissolution without Assignment, on Retirement of Partner.**

of delivery of plant, stock, &c.;

of collection of debts owing to partnership.

Testatum.

Covenants by vendor.

XX. Deed of Dissolution without Assignment, on Retirement of Partner.

ruption by the said [A. B.], his executors and administrators, or any person or persons claiming through or under him or them; And further, that he the said [A. B.], his executors or administrators, will or shall at all times hereafter, upon the request and at the cost of the said [C. D.], his executors, administrators, or assigns, make, execute, and do all such further powers, assurances, acts, and things, for more effectually vesting the said share of him the said [A. B.], of and in the said partnership, plant, utensils, stock in trade, materials, and effects, in the said [C. D.], his executors, administrators, or assigns, and enabling him and them to recover and receive the said debts owing to the said partnership, as by the said [C. D.], his executors, administrators, or assigns, shall be reasonably required.

Second *testatum.*

Release.

AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the premises, the said [A. B.] hereby releases the said [C. D.] from all actions, proceedings, claims, and demands which the said [A. B.], his heirs, executors, or administrators, now has, or hereafter might have had against the said [C. D.], his heirs, executors, or administrators, for or by reason of the said late partnership, or the effects, credits, and property thereof, or anything relating thereto.

Recital as to goodwill.

AND WHEREAS in estimating the said sum of £—— so to be paid by the said [C. D.] to the said [A. B.] as aforesaid, no part thereof is intended to represent or to be deemed to be in payment for the goodwill of the said trade or business.

Third *testatum.*

Vendor to be at liberty to exercise the trade on his own account.

NOW THIS INDENTURE LASTLY WITNESSETH, that, it is hereby agreed and declared that nothing herein contained shall extend, or be construed to prevent or restrain the said [A. B.] from setting up or exercising the said trade or business of —— at any place or places, and in any manner that he shall think proper.

IN WITNESS, &c.

XXI. *ASSIGNMENT by an* OUTGOING PARTNER *to his* CO-PARTNERS *of his* SHARE *in* LEASEHOLD PREMISES *to accompany a* DEED *of* DISSOLUTION *of* PARTNERSHIP.

THIS INDENTURE (*f*), made the —— day of ——, 18—, BETWEEN [A. B.], of, &c., of the one part; and [C. D.], of, &c., and [E. F.], of, &c., of the other part: WHEREAS by an indenture of lease, dated the —— day of ——, 18—, and expressed to be made between [*lessor*], of the one part; and the said [A. B.], [C. D.], and [E. F.], of the other part; the lessor demised unto the said [A. B.], [C. D.], and [E. F.], their executors, administrators, and assigns, all that [*describe parcels fully as in the lease*], with the appurtenances, to hold the same unto the said [A. B.], [C. D.], and [E. F.], their executors, administrators, and assigns, from the —— day of ——, 18—, for the term of —— years, at the yearly rent of £——, and subject to the performance and observance of the lessee's covenants and conditions therein contained: AND WHEREAS the parties hereto are entitled to the said leasehold premises, and also to other property not herein comprised, nor intended to be hereby assigned, in equal shares; and it has been agreed that the said [A. B.] shall sell to the said [C. D.] and [E. F.] all his share and interest of and in the said leasehold premises, and of and in such other property as aforesaid, at or for the price or sum of £——: AND WHEREAS for the purposes of the Stamp Act, it has been agreed that the said sum of £—— shall be apportioned, and that the sum of £——, part thereof, shall be taken to be the value of or consideration for the share of the said leasehold premises hereby assigned, and that such share shall be assigned unto the said [C. D.] and [E. F.] in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— to the said [A. B.], paid by the said [C. D.] and [E. F.], the receipt whereof is hereby acknowledged, he the said [A. B.] hereby assigns, and as beneficial owner conveys unto the said [C. D.] and [E. F.], their executors,

Parties.

Recitals: of lease;

of title of outgoing partner to share;

of apportionment of price for purposes of stamp duty.

Testatum.

Assignment of leaseholds.

(*f*) Stamp *ad valorem* as a conveyance on sale in respect of the amount of the purchase-money apportioned as representing the value of the leasehold premises. Stamp.

XXI. **Assignment of Share of Leaseholds on Dissolution.**

administrators, and assigns, all that one equal third part or share, and all other the part or share and interest of him the said [A. B.] of, and in all and singular the said messuage, buildings, and premises comprised in and expressed to be demised by the said indenture of lease: To HOLD the premises unto the said [C. D.] and [E. F.], their executors, administrators, and assigns henceforth, during the residue of the said term of —— years, at the rent, and subject to the covenants, in the said lease respectively reserved and contained, on the lessee's part to be paid and performed. AND the said [C. D.] and [E. F.] do for themselves and their assigns, and each of them for himself and his assigns, doth hereby covenant with the said [A. B.], that they the said [C. D.] and [E. F.], their executors, administrators, or assigns, or some or one of them, will duly pay, perform, and observe the rent and covenants henceforth on the lessee's part to be respectively paid, performed, or observed in respect of the said premises, by virtue of the said lease, and keep the said [A. B.], his heirs, executors, and administrators, indemnified against all actions, proceedings, costs, damages, expenses, claims, and demands whatsoever, for or on account of any non-payment, non-performance, or non-observance thereof respectively (*g*).

Habendum.

Covenants for bills by vendor.

Covenant by purchaser to pay rent and perform covenants.

IN WITNESS, &c.

XXII. *ASSIGNMENT by* ADMINISTRATOR *of* DECEASED PARTNER *of* STOCK IN TRADE *of the old Partnership to the* SURVIVING PARTNER. DISSOLUTION *of Partnership formed between the* SURVIVING PARTNER *and the* WIDOW *of the* DECEASED PARTNER *since his Death.* ASSIGNMENT *by the Widow (retiring Partner) of* HER SHARE *of the* STOCK.

Parties.

THIS INDENTURE (*h*), made the —— day of ——, BETWEEN [A.], (widow of [B.], of ——, deceased), of the first

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(*g*) As to the vendor's right to an indemnity against the rent and covenants, see *post*, tit. PURCHASES.

Stamp.

(*h*) As to stamp, see *ante*, p. 488, note (*o*).

XXII. **Assignment by Administrator, and Dissolution of Partnership formed with the Widow.**

part; [C.], of ——, of the second part; and [D.], of ——, of the third part: WHEREAS the said [B.], deceased, and [D.], for many years previously to and up to the time of the decease of the said [B.], carried on the business or trade of —— in partnership together: AND WHEREAS the said [B.] died on or about the —— day of ——, intestate, and thereupon letters of administration of his personal estate and effects were granted to the said [C.] by the district registry at —— of her Majesty's High Court of Justice, Probate Division, she the said [A.] having duly renounced the administration thereof: AND WHEREAS the said stock in trade, plant, and fixtures, used by the said [B.], deceased, and [D.], for the purpose of carrying on the said joint trade, were wholly provided by and were the exclusive property of him the said [B.]; and soon after the decease of the said [B.] the same stock, plant, and fixtures were duly valued, and thereupon the said [D.] became the purchaser thereof at or for the price or sum of £——, which sum of £—— the said [D.] has paid to the said [C.] as the administrator of the said [B.], as the said [C.] hereby acknowledges; but no assignment has hitherto been executed unto the said [D.] of the said stock, plant, and fixtures so by him purchased as aforesaid: AND WHEREAS, since the death of the said [B.], the said [A.], his widow, has carried on the said trade or business of ——, in partnership with the said [D.], with the said stock, plant, and fixtures so purchased by him the said [D.] as aforesaid; and during the course of their said partnership they have acquired some additional stock in trade, and divers sums of money are owing to them for or in respect of their said partnership: AND WHEREAS no distribution or division has hitherto been made between the said [D.] and [A.] of the profits of the said joint trade so carried on by them since the decease of the said [B.], but the said [D.] has at different times advanced unto the said [A.] several sums of money, amounting in the whole to the sum of £——, as the said [A.] hereby acknowledges: AND WHEREAS the said [A.] and [D.] have agreed to dissolve the said partnership so carried on by them since the death of the said [B.] as aforesaid, and upon the treaty for such dissolution it was agreed that, in consideration of the sum of £—— so advanced and paid to her the said [A.] as aforesaid, and of the further sum of £——, to be secured to be paid to the said [A.] by the bond of the said [D.], at the times hereinafter mentioned, she the said [A.]

Recital of partnership.

Of death and intestacy of partner, and administration being taken out to his effects.

That the stock, &c., belonged to the deceased partner, and had been sold by his administrator to the surviving partner;

but no assignment had been made;

of partnership carried on by surviving partner with the widow of deceased.

That no division of profits had been made.

Of agreement for dissolution on certain terms.

XXII. **Assignment by Administrator, and Dissolution of Partnership formed with the Widow.**

should assign and transfer to him the said [D.] all her part, share, and interest, as well of and in the stock in trade, plant, fixtures, and things mentioned in the schedule hereunder written, as also of and in the stock and effects in trade, credits, and sums of money now belonging or owing to them, the said [A.] and [D.], in respect of the said joint trade or business so by them carried on since the decease of the said [B.] as aforesaid; and also that she the said [A.] should enter into such covenants as are hereinafter contained, restraining her from carrying on the aforesaid trade or business in manner hereinafter expressed: AND WHEREAS, in pursuance of the said agreement on the part of the said [D.], he the said [D.], by his bond [*Recite bond*]: AND WHEREAS the said [C.], upon the application of the said [D.], hath consented, so far as he lawfully may or can, without rendering himself liable to or responsible for any of the covenants and agreements hereby entered into between them the said [A.] and [D.], to concur in and be a party to these presents, for the purpose of assigning unto him the said [D.] the said stock, plant, and fixtures so by him purchased as aforesaid, and of entering into the covenants hereinafter contained as to his own acts and deeds, but no further or otherwise: NOW THIS INDENTURE WITNESSETH, that, in consideration of the premises, and particularly in consideration of the said sum of £—— so heretofore paid by the said [D.] to the said [C.] as aforesaid, the receipt whereof the said [C.] hereby acknowledges, he the said [C.] hereby assigns, and, as such personal representative of the said [B.] deceased as aforesaid, conveys (*i*) unto the said [D.], his executors, administrators, and assigns (*k*) ALL AND SINGULAR the said stock, plant, fixtures, and things belonging to and being in or used by the said joint trade heretofore carried on by them the said [B.] and [D.] previously to the decease of the said [B.], and

Agreement by administrator to make assignment.

Testatum.

Assignment by administrator of stock, &c.

(*i*) A conveyance as "personal representative" of a deceased person implies a covenant that the conveying party has not incumbered: see Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), sect. 7, sub-sect. 1 (F).

(*k*) As A. had renounced administration of the effects of her husband, and could, therefore, have no claim in a representative character, and as she afterwards assigns all her interest in the partnership carried on by her since the decease of B., there is no necessity of her joining in this assignment.

XXII. **Assignment by Administrator, and Dissolution of Partnership formed with the Widow.**

specified in the schedule hereunder written; To HOLD the premises hereby assigned unto the said [D.], his executors, administrators, and assigns absolutely. AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the premises, and in pursuance of the aforesaid agreement, they the said [A.] and [D.] hereby declare and agree that the partnership and joint trade so by them carried on since the decease of the said [B.] as aforesaid, shall, from the —— day of —— now last past, be deemed to have determined and stand dissolved; AND IT IS HEREBY AGREED, &c., [*that advertisement of dissolution shall be published and notices given ut ante*, p. 490, *mutatis mutandis*]. AND THIS INDENTURE FURTHER WITNESSETH, that, in further pursuance of the said agreement on the part of the said [A.], and in consideration of the sum of £—— so heretofore paid by the said [D.] to the said [A.], and also in consideration of the further sum of £—— so secured to be paid to the said [A.] by the above recited bond of the said [D.] as aforesaid, she the said [A.] hereby assigns and conveys unto the said [D.], his executors, administrators, and assigns, ALL the part and share of her the said [A.], of, in, and to all and every the money, goods, stock, and effects whatsoever belonging to the said partnership so carried on by them the said [A.] and [D.] since the decease of the said [B.] as aforesaid or to them the said [A.] and [D.], or either of them, in respect of the same partnership, and also of and in all credits and sums of money now or at the dissolution of the said partnership, due and owing to the same partnership, or to them the said [A.] and [D.], or either of them in respect of the said partnership; To HOLD the premises lastly hereby assigned unto the said [D.], his, executors, administrators, and assigns, absolutely; and for the consideration aforesaid, &c., [*Power of attorney ut ante*, p. 490, *mutatis mutandis*]: AND the said [A.] hereby covenants with the said [D.] in manner following, that is to say, [*Covenants by widow for further assurance; and not to receive or release any debt, &c., ut ante*, pp. 491, 492, *mutatis mutandis*]: AND the said [D.] hereby covenants with the said [A.], &c., [*Covenants by surviving partner to pay the debts of the partnership* "so carried on by them the said [A.] and [D.] since the decease of the said [B.] as aforesaid;" *and to indemnify the widow therefrom, ut ante*, p. 491, *mutatis mutandis*]: AND in consideration of the premises she, the said [A.], hereby

Further *testatum.*

Dissolution of partnership.

Further *testatum.*

Assignment by widow of her share.

XXII. **Assignment by Administrator, and Dissolution of Partnership formed with the Widow.**

covenants with the said [D.] that she, the said [A.], will not, &c. [*Covenant by widow not to exercise the trade, nor disclose secrets, &c., ut ante*, p. 492].

In witness, &c.

The Schedule above referred to.

XXIII. *BOND to secure Payment of* Instalments *of* Purchase-money *of a* Share *of an* Outgoing Partner *and* Interest *thereon, and to* Indemnify *him against the* Liabilities *of the Partnership.*

Obligation from continuing partners to retiring partner.

KNOW ALL MEN by these presents (*l*) that we [A. B.], of, &c., and [C. D.], of, &c., are bound to [E. F.], of, &c., in the sum of £—— to be paid to the said [E. F.], or to his executors, administrators, or assigns, or to his or their attorney or attorneys; For which payment we jointly and severally bind ourselves firmly by these presents: Sealed with our respective seals: Dated this —— day of ——, 18—.

Recitals: of partnership;

Whereas the said [A. B.], [C. D.], and [E. F.] have for some time past carried on the trade or business of —— in partnership, under the firm of "B. and Co.," at —— aforesaid:

of deed of dissolution and assignment of share;

And whereas by an indenture bearing even date with these presents and expressed to be made between the said [E. F.] of the one part, and the said [A. B.] and [C. D.] of the other part, it has been agreed that the said partnership shall be deemed to be determined and stand dissolved as from the —— day of ——, and by the same indenture (among other things) the said [E. F.] has assigned unto the said [A. B.] and [C. D.], their executors, administrators, and

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Stamp.

(*l*) Stamp *ad valorem* in respect of the sum, the payment of which, by instalments, is secured by bond. This bond would also seem in strictness to be liable to *ad valorem* duty in respect of the share of the debts against which the retiring partner is thereby indemnified: see sect. 73 of Stamp Act, 1870; and see *Lord Canning* v. *Raper*, 1 E. & B. 164. But a 10*s.* stamp is generally regarded in practice as sufficient in respect of an indemnity by bond or covenant, where the amount of the debt is not stated.

XXIII. Bond to Secure Purchase-money of Share in Partnership and for Indemnity.

assigns all the share and interest of him the said [E. F.] in the partnership business and in the stock in trade, goodwill, property, effects, debts, and moneys belonging or owing to the partnership or to the said [A. B.], [C. D.], and [E. F.], or any of them in relation thereto: And whereas upon the treaty for the said dissolution it was (among other things) agreed that the said [A. B.] and [C. D.] should execute and deliver to the said [E. F.] their bond in the penalty above mentioned, with such condition as is hereinafter mentioned: Now the condition of the above written bond is such that if the said [A. B.] and [C. D.], or one of them, or the heirs, executors, or administrators of them, or any of them, should pay to the said [A. B.], his executors, administrators, or assigns, the sum of £—— in manner following: that is to say, the sum of £—— on the —— day of —— now next ensuing; the sum of £—— on the —— day of —— then next following; and the sum of £—— on the —— day of —— 18—; together with interest after the rate of 5 per cent. per annum on each of the said days of payment for the said total sum of £——, or for so much thereof as at or immediately before the payment of such instalments respectively shall remain unpaid, without any deduction: And shall also within —— calendar months from the date hereof pay and discharge all debts, liabilities, and engagements of the said partnership, to the payment, performance, or observance of which the said [A. B.], [C. D.], and [E. F.], or any of them, or the heirs, executors, or administrators, or them or any of them now are or may hereafter become liable, and keep indemnified the said [A. B.], his heirs, executors, administrators, estates and effects against all actions, proceedings, losses, damages, costs, expenses, claims, and demands whatsoever in respect thereof, and also against all costs, damages, and expenses by reason of any action or proceeding which may be brought or instituted by the said [A. B.] and [C. D.], or either of them, or their or his executors or administrators in the name or names of the said [E. F.], his executors or administrators, by virtue of the power in that behalf mentioned in the said indenture of even date herewith, and of any act, matter, or thing relating thereto: Then the above-written bond shall be void, otherwise the same shall be and remain in full force.

of agreement for bond.

Condition for payment of purchase-money by instalments, with interest;

and for indemnity.

XXIV. *DEED OF COVENANT by continuing Partners to* SECURE *to an* OUTGOING PARTNER, *in consideration of his* RETIREMENT *from the business, an* ANNUITY *to* HIMSELF *and his* WIFE *and* CHILDREN.

Parties.

Recitals: of articles of partnership;

of agreement for dissolution of partnership;

of agreement for payment and securing of annuities;

Testatum.

THIS INDENTURE (*m*), made the —— day of ——, 18—, BETWEEN [A. B.], of, &c., and [C. D.], of, &c., of the one part; and [E. F.], of, &c., of the other part: WHEREAS by articles of partnership dated the —— day of ——, 18—, and made between the same parties as are parties hereto, and in the same order, &c. [*Recite articles of partnership showing the nature of the business, the term of the partnership, the amount of capital thereby agreed to be contributed by the respective partners, and the proportions in which they were to share profits and losses*]: AND WHEREAS it has been agreed that the partnership constituted by the said articles shall be determined and dissolved, and that the said [E. F.] shall relinquish all his share and interest in the said partnership, and in the property, goodwill, credits, and effects thereof, and in the profits henceforth to accrue of the said business, to the said [A. B.] and [C. D.], who intend henceforth to carry on the said business without the said [E. F.]; AND WHEREAS upon the treaty for the dissolution of the said partnership, it was agreed the said [A. B.] and [C. D.] should during the unexpired residue of the said partnership term pay to the said [E. F.], if he should so long live, and if he should die before the expiration of the said term, then during the then unexpired residue of the said term to [G. F.], his present wife, if she should so long live, and if she should die before the expiration of the said term, then to [H. F.] and [I. F.], the children of the said [E. F.], during the then unexpired residue of the said term, the several annuities or yearly sums of the amounts hereinafter mentioned to be secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in

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Stamp.

(*m*) In this case the annuity periodically payable is not of a certain or ascertainable amount: it would, therefore, seem that the deed is not liable to an *ad valorem* duty as an annuity deed (as to which, see *ante*, Vol. II., p. 74), but only to a common deed stamp of 10*s*.

XXIV. Deed of Covenant to Secure Annuity to Retiring Partner.

consideration of the premises, the said [A. B.] and [C. D.] hereby covenant with the said [E. F.] in manner following, that is to say, that they the said [A. B.] and [C. D.], or one of them (*n*), or his executors or administrators, shall and will from time to time during the continuance of the said partnership term, or during so long of the same term as the said [E. F.] shall live, pay unto the said [E. F.], or his assigns, such annuity or yearly sum as shall be equivalent to one-third part of the share in the clear gains and profits of, or to arise from, the said business to be carried on by the said [A. B.] and [C. D.], both, alone, or in partnership with any other person or persons as aforesaid; such yearly sum to be paid by half-yearly payments on the —— day of —— and —— day of —— in each year; and the first half-yearly payment to be made on the said —— day of —— next (*o*): And further that if the said [E. F.] shall die, during the continuance of the said partnership term, and the said [G. F.], the wife of the said [E. F.], shall be then living, they the said [A. B.] and [C. D.], or one of them (*n*), or their or his executors or administrators, shall and will thenceforth from time to time during the then unexpired residue of the said partnership term, or during such part thereof as the said [G. F.] shall live, pay to the said [G. F.] or her assigns such yearly sum as will be equivalent to one-fourth of the clear gains and profits of the said business by half-yearly payments, the first of such payments to be made at the expiration of six calendar months next after the decease of the said [E. F.]: And in case the said [E. F.] and [G. F.] shall both die during the continuance of the said partnership term, then, from and after the death of the sur-

Covenants:

to pay to out-going partner an annuity equivalent to one-third;

to pay his widow an annuity equivalent to one-fourth.

In case [E. F.] and wife both die, then to their two children, an annuity equivalent to one-fourth.

(*n*) Insert here, if such is the intention, omitting the words executors or administrators throughout:

"during the lives of them the said [A. B.] and [C. D.] and the life of the survivor of them, or until they or he shall cease to carry on the said trade or business without receiving any consideration or compensation by way of payment of money, or of annuity, or otherwise for ceasing to carry on the same, and without retaining any share or interest in the said trade or business or the profits thereof."

(*o*) It is not now necessary to covenant for payment of a proportional part of an annuity for the period between the last periodical payment, and the death of the annuitant: see stat. 33 & 34 Vict. c. 35; see also *ante*, Vol. II., p. 687.

XXIV. Deed of Covenant to Secure Annuity to Retiring Partner.

vivor of them the said [E. F.] and [G. F.] his wife, the said [A. B.] and [C. D.], or one of them (*p*), their or his executors or administrators, shall and will thenceforth from time to time during the then unexpired residue of the said partnership term, or during such part thereof as the said [H. F.] and [I. F.], or either of them, shall happen to live, pay to the said [H. F.] and [I. F.], or the survivor of them, the yearly sum following, that is to say, if the said [H. F.] and [I. F.] shall be both living at the decease of the survivor of said [E. F.] and [G. F.], then unto the said [H. F.] and [I. F.] during their joint lives, as tenants in common, such annuity or yearly sum as will be equivalent to one-fourth part or share of and in the clear gains and profits of the said partnership, such yearly sum to commence from the day of the decease of the survivor of them the said [E. F.] and [G. F.]; and the first payment thereof to be made at the expiration of six calendar months after such decease, and after the death of either of them the said [H. F.] and [I. F.] who shall first die, or in case only one of them shall be living at the decease of the survivor of the said [E. F.] and [G. F.], then to the survivor of them the said [H. F.] and [I. F.], and his assigns, such annuity or yearly sum as will be equivalent to one-sixth part of the said clear gains and profits as aforesaid, to commence from the time of the decease of the other of them the said [H. F.] and [I. F.], or of the survivor of them the said [E. F.] and [G. F.], as the case may be; and the first payment to be made at the expiration of six calendar months from the time of such decease: PROVIDED ALWAYS, and it is hereby agreed and declared, that nothing herein contained shall be deemed or construed so as to confer on any person or persons entitled under or by virtue of these presents to any part or share in the profits of the said partnership to join or interfere in, or with the taking of the general accounts of the said partnership, or to inspect any of the books of account or other documents belonging to the same; but an annual general account of the business of the said partnership shall be taken on the —— day of —— in every year during the continuance of the partnership term, pursuant to the provisions in that behalf contained in the hereinbefore recited articles of partnership by the said [A. B.] and [C. D.],

After the death of either of them, then to the survivor an annuity equal to one-sixth.

Proviso that annuitants shall not join in taking accounts, nor inspect books.

(*p*) See note (*n*), p. 509.

XXIV. Deed of Covenant to Secure Annuity to Retiring Partner.

or one of them or other the partners or partner for the time being constituting the said firm: and as soon as conveniently may be thereafter a proper account and balance-sheet shall be made out, and a copy or copies thereof furnished to the person or persons for the time being so entitled as aforesaid, verified, if so required, by such person or persons by the statutory declaration of one of the partners for the time being; and such account and balance-sheet, verified, if so required, by such declaration shall be binding and conclusive on every person so entitled as aforesaid: PROVIDED ALSO, that these presents shall be a security for the several annuities hereby made payable during the continuance of the said partnership term, whoever may be the persons for the time being constituting, or concerned, or engaged in the said business, and under whatever style or firm the same may be carried on.

Proviso that security shall not be affected by changes in the firm.

IN WITNESS, &c.

XXV. *DEED OF COVENANT by* SURVIVING PARTNERS *to secure a* SHARE *of* CAPITAL *of a* DECEASED PARTNER *left pursuant to the* ARTICLES *of* PARTNERSHIP *as a* LOAN *during the* PARTNERSHIP TERM, *the* INTEREST *to be increased in proportion to* INCREASE *of* PROFITS, *&c.*

THIS INDENTURE (*q*), made the —— day of ——, 18—, BETWEEN [A. B.] of, &c., and [C. D.] of, &c., of the one part and [*executor*] of, &c., and [*executor*] of, &c., of the other part: WHEREAS by articles of partnership made the —— day of ——, 18—, between the said [A. B.] of the first part and [C. D.] of the second part and [E. F.] deceased, it was agreed that the parties thereto should become and continue partners for the term of —— years from the —— day of ——, 18—, in the trade or business of —— under the style or firm of [B. & Co.] and it was thereby provided, [*state fully articles, that death of a partner should not dissolve a partnership, that on such death a general account and valuation*

Parties.

Recitals: of articles partnership;

provisions in;

(*q*) Stamp *ad valorem* as a mortgage on the value of the share of capital left as a loan.

Stamp.

XXV. Deed of Covenant to Secure Capital of Deceased Partner.

should be taken, and that the share of the deceased partner should be left in the business as a loan to the partnership]: And whereas the said [E. F.] died on the —— day of ——, 18—, having by his will dated the —— day of ——, 18—, appointed the said [*executor*] and [*executor*] to be executors thereof who duly proved the same will on the —— day of ——, 18—, in the district registry at —— of Her Majesty's High Court of Justice, Probate Division: And whereas pursuant to the provision in that behalf contained in the said articles of partnership, a general account and valuation of the property, assets, and credits and liabilities of the partnership have been made and taken, whereby it appears that the net value of the share of the said [E. F.], deceased, amounts to £——; And whereas all the share of profits arising from the said business and accrued due to the said [E. F.] up to the time of his death amounting to the sum of £—— has been paid by the said [A. B.] and [C. D.] to the said executors (as they the said executors hereby acknowledge): And whereas the said [A. B.] and [C. D.] intend to continue the said trade or business in partnership for the remainder of the said term under the said style or firm of [B. & Co.]: And whereas it has been agreed that the said sum of £—— (the ascertained value of the said share of the said [E. F.]) shall be continued in the business as a loan to the said [A. B.] and [C. D.] as such continuing partners as aforesaid, and that the repayment thereof with interest at the rate hereinafter mentioned shall be secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the sum of £—— so continued in the said business and lent to the said [A. B.] and [C. D.] such continuing partners as aforesaid (the receipt whereof is hereby acknowledged) they the said [A. B.] and [C. D.] hereby jointly and severally covenant with the said [*executors*] to pay to them on the —— day of ——, 18— (the day of the expiration of the partnership term) with interest thereon in the meantime at the rate of —— per cent. per annum, and also so long thereafter as any principal money shall remain due under these presents to pay the said [*executors*] interest thereon at the same rate by equal half-yearly payments on the —— day of —— and the —— day of ——: Provided always that whenever in any year the net profits of such busi-

of death of partner, will, probate, &c.;

of general account;

of payment of share of profits to executors;

of agreement for leaving deceased partner's capital in the business.

Testatum.

Covenants by surviving partners;

to pay principal and interest.

Proviso for payment of additional

XXV. Deed of Covenant to Secure Capital of Deceased Partner.

ness shall, according to the annual general account for that year, appear to exceed the sum of £—— then the said [A. B.] and [C. D.], or the survivor of them, or the executors or administrators of such survivor, shall during the year next ensuing pay to the said [*executors*], their executors, administrators, or assigns, one equal third part or share of the excess of the profits of the said business above such sum of £—— by way of additional interest by such equal half-yearly payments as aforesaid: PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the said [*executors*], if and whenever they shall think proper, to take part in making and taking the annual general accounts and valuations directed to be made and taken by the articles, and at all such reasonable times as shall be agreed upon to have access to and inspect the books, accounts, and other documents of the partnership relating to the said business, and to make, and at their own cost, such copies thereof and such extracts therefrom respectively as they may think proper: PROVIDED ALWAYS, that nothing hereinafter contained shall be deemed or construed so as to entitle the said [*executors*] to interfere otherwise in the management or conduct of the said business or render the said [*executors*] liable as partners: PROVIDED ALWAYS that if at any time the said [A. B.] and [C. D.] or either of them, or any future partner or partners in the said firm, shall at any time manage or conduct the said business otherwise than pursuant to the said articles, then and in any such case the said principal sum of £——, and interest and additional interest (if any) then accrued due thereon, shall become payable on demand: PROVIDED LASTLY, that the security intended to be hereby effected shall not be in anywise prejudiced or affected whoever may be the persons for the time being constituting or concerned in the said firm or the business thereof, and under whatever style or firm the said trade or business of ——, now carried on by the said [A. B.] and [C. D.], may be carried on.

interest on excess of profits.

Proviso that executors may join in taking accounts and inspect books, &c.;

but shall not interfere in management of business, nor be liable as partners.

Proviso for calling in principal on breach of articles.

Proviso that security shall not be affected by changes in the firm.

IN WITNESS, &c.

XXVI. *DEED executed on the* DISSOLUTION *of a* PARTNERSHIP *by effluxion of time where* ONE PARTNER *who takes over the* CREDITS *and* EFFECTS, *and a* SURETY, COVENANTS *to indemnify the other against the* PARTNERSHIP DEBTS, *&c.* INDEMNITY *to* SURETY (*p*).

THIS INDENTURE (*q*), made the —— day of ——,

Parties. BETWEEN the within-named [A. B.], of the first part; the within-named [C. D.], of the second part; and [*surety*], of, &c., of the third part:

Recitals: of dissolution of partnership; WHEREAS the partnership subsisting between the said [A. B.] and [C. D.], by virtue of the within-written indenture, was this day dissolved by effluxion of time, and notice of the dissolution thereof has been signed by the said [A. B.] and [C. D.] respectively, in order to its being inserted in the London Gazette, which advertisement is to be inserted at the expense of the said [C. D.]:

of agreement for carrying on the business; AND WHEREAS it has been agreed between the said [A. B.] and [C. D.], that the within-mentioned trade or business shall henceforth be carried on by the said [C. D.], and that he shall take over the whole of the partnership stock, credit, and effects, and accordingly by an indenture bearing even date with these presents, and expressed to be made between the said [A. B.] of the one part, and [C. D.] of the other part (among other things), the said [A. B.], for the considerations therein mentioned, has assigned and released unto the said [C. D.], his executors, administrators, and assigns, all his estate and interest in the said business, and in the moneys, stock, credits, assets, and effects belonging to the said partnership, or to the said

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(*p*) This deed of covenant is intended to be endorsed on the articles of partnership; but it is sometimes desired that there should be an indemnity effected by a separate instrument, which is delivered to and retained by the retiring partner. Such an indemnity is more commonly effected by bonds than by deed of covenant, but the former mode has no advantage as regards efficacy or convenience over the latter.

Stamp. (*q*) Stamp, apparently 10*s.*, see *ante*, p. 506, note (*l*). The addition of the indemnity to the surety clearly does not subject the deed to any further stamp, as the covenant of the principal and surety with the creditor, and of the principal with the surety, to indemnify him against the former covenant, are considered as part of the same transaction: *Annandale* v. *Pattison*, 9 B. & C. 919.

XXVI. Deed of Covenant, &c.

[A. B.] and [C. D.] or either of them, in respect of the same: AND WHEREAS as part of the consideration for the said assignment and release, it was agreed that the said [C. D.] and the said [*surety*] as his surety, should enter into the covenant hereinafter contained, NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises, the said [C. D.] and [*surety*] hereby jointly and severally covenant with the said [A. B.], that they the said [C. D.] and [*surety*], or one of them, or the heirs, executors, or administrators of them or one of them, will duly pay all the debts and sums of money owing by the said [A. B.] and [C. D.] on account of their said late partnership as aforesaid, at the respective times, and in the manner following (that is to say), such of the said debts as are already due and payable within the period of three calendar months from the date hereof, and the residue of the said debts within the period of three calendar months after the same shall become due and payable, and will effectually keep indemnified him the said [A. B.], his heirs, executors, and administrators, from and against all losses, costs, damages, and expenses whatsoever, by reason or on account of the non-payment of the same several debts, or any of them, at the respective periods aforesaid, or at any other period whatsoever; And also from and against all losses, costs, damages, and expenses whatsoever, by reason or on account of any action or suit, actions or suits, or other proceedings at law or in equity, in which the said [C. D.], his executors or administrators, shall at any time hereafter use in the name or names of the said [A. B.], his executors or administrators (and which he the said [C. D.], his executors or administrators, is and are hereby authorised to do), or otherwise in relation thereto. AND THIS INDENTURE FURTHER WITNESSETH, that, in pursuance of an agreement entered into by the said [C. D.] previously to the said [*surety*] agreeing to join as his surety in the covenant hereinbefore contained, he the said [C. D.] hereby covenants with the said [*surety*], that he the said [C. D.], his heirs, executors, or administrators, will at all times hereafter effectually keep indemnified the said [*surety*], his heirs, executors, and administrators, from all losses, costs, charges, damages, and expenses, by reason of the said [*surety*] having joined and concurred in the covenant hereinbefore contained on the part of the said [C. D.] and [*surety*], or by

of agreement for indemnity.

Testatum.

Covenant by continuing partner and surety to indemnify retiring partner.

Further *testatum.*

Covenant of indemnity by principal with surety.

XXVI. Deed of Covenant, &c.

reason of any act, matter, or thing in anywise relating thereto (*r*).

In witness, &c.

XXVII. *MEMORANDUM AND ARTICLES OF ASSOCIATION of a* Joint Stock Company limited *by* Shares.

The Companies Acts, 1862 to 1883.

Company Limited by Shares.

MEMORANDUM OF ASSOCIATION (*s*), of the —— Gold Mining Company, Limited.

Name. 1. The name of the Company is the —— Gold Mining Company, Limited.

Office. 2. The registered office of the Company will be situate in England.

As to the covenant to indemnify the surety.

(*r*) Without a covenant of this kind, the surety paying any monies on account of the joint obligation of him and the principal debtor, would be a simple contract creditor only of the latter: *Copis* v. *Middleton*, 1 Turn. 224, *ante*, Vol. II., p. 281. The addition of such a covenant does not, however, seem to be essential, the distinction between specialty and simple debts and contracts being of less importance now than formerly: see *ante*, Vol. II., p. 268. There is an objection, moreover, to the introduction of such a covenant in the principal deed, where the deed is not in the possession or power of the surety, which, however, might be prevented by the following provision:—

Deed to be deposited with a third person for the benefit of all parties.

"Provided always, and it is hereby agreed that these presents shall be deposited, for safe custody, on behalf of the parties hereto, with [*solicitor*], of ——, solicitor, to be produced by him to and for the benefit of the said parties respectively, and their respective heirs, executors, or administrators, when and as often as occasion shall require; who shall be at liberty, as often as they shall think proper, at their respectively own costs, to obtain from the said [*solicitor*] copies or extracts of or from the same."

This clause would be the solicitor's authority to produce the deed to the respective parties.

Stamp. (*s*) Stamp 10*s*.

XXVII. Memorandum of Association of a Limited Company.

3. The objects for which the Company is established are:—

Objects (*t*):

(*a.*) To adopt and carry into effect, either with or without modification, as may be arranged, an agreement dated, &c., and made between [A. B.], of the one part; and [C. D.], on behalf of the Company, of the other part. — to adopt contract with vendor;

(*b.*) To purchase, lease, or otherwise acquire, and to work gold mines, minerals, and mining rights in ——. — to purchase mines;

(*c.*) To work the gold mines, gold reefs, and mining rights to be acquired by the Company under the said agreement, and any other gold mines, gold reefs, and mining rights which may from time to time be purchased, leased, or otherwise acquired by them, and to crush, wash, smelt, reduce, and amalgamate the ore, and render marketable the produce, and develop the resources of the said mines; and to crush, wash, smelt, reduce, and amalgamate the produce of any mines, whether belonging to the Company or not. — to work mines and render marketable the produce thereof;

(*d.*) To erect, establish, construct, or acquire, by purchase or otherwise, all works, buildings, houses, reservoirs, tanks, machinery, utensils, and other things which may be necessary or convenient for the purposes of the Company. — to erect buildings, construc machinery, &c.

(*e.*) To construct, or aid in, and subscribe towards the construction, maintenance, and improvement of roads, waterworks, and canals, and also of tramways, railways, and other ways, and quays, and wharves, for the purposes of the Company, or for access to and from the works and property of the Company, or to connect the same with other lines of communication in or at any port, river, place, or other outlet for traffic. — To construct and contribute to roads, &c.

(*f.*) To purchase, take or lease, or exchange, hire, or otherwise acquire, any real and personal property, and any roads, water-rights, easements, and — To acquire lands, rights, patents, &c.

(*t*) The special object clauses in the text are adapted to a gold mining company abroad; some forms of special object clauses adapted to other companies will be found, *post*, pp. 567 *et seq.*

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privileges, together with any patents or patent-rights, concessions, inventions, plant, and stock in trade necessary or convenient for the purposes of the Company.

To purchase interests, and amalgamate with other companies.

(*g.*) To purchase the goodwill or any interest in any trade or business of a similar nature or character with the trade or business of the Company, and to make and carry into effect amalgamation of interests, in whole or in part, or other arrangements with any other companies, partnership, or persons.

To acquire shares in other companies.

(*h.*) To take by subscription, purchase, or otherwise, and hold shares or stock in any company in which the liability of the members shall be limited to the amount of their shares or stock, and having objects, or purposes, of a similar nature with those of the Company, or any of them, or calculated to benefit the property or business of the Company.

To sell mines, minerals, and other property.

(*i.*) To sell, lease, or otherwise dispose of the gold mines, gold reefs, and mining rights, minerals, and real and personal property belonging to the Company from time to time, in whole or in part, or to divide the same, and contract for the development and working of any part or parts thereof, by separate companies, partnerships, or persons, and to aid in the formation of such associations.

To borrow and raise money.

(*k.*) To borrow or raise money for any of the purposes of the Company, and to execute and issue bills, notes, bonds, and debentures to bearer or otherwise, mortgages, and other instruments for securing the payment thereof, with or without a charge, upon all or any part of the property of the Company, and including or not any uncalled capital, and upon such terms as to priority or otherwise as the Company shall think fit.

To lend money.

(*l.*) To lend money, with or without security, to any company or person for any purpose whatever.

To establish agencies.

(*m.*) To establish in the United Kingdom and abroad, and to regulate agencies for the purposes of the Company.

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(*n*.) To do all such other things as are incidental or conducive to the attainment of the above objects, or any of them.

General clause.

4. The liability of the members is limited.

Liability.

5. The capital of the Company is £100,000, divided into 20,000 shares of £5 each (*x*).

Capital.

Agreement to take shares.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite to our respective names.

Names, Addresses, and Description of Subscribers.	Number of Shares taken by each Subscriber.
Arthur Bell, of &c., Merchant . . .	Twenty.
Charles Deane, of &c., Director of a Joint-Stock Company	Twenty.
Edward Finch, of &c., Assoc. Inst., C. E. .	Ten.
George Hart, of &c., Surgeon . . .	Ten.
Isaac Jackson, of &c., Accountant . .	Five.
Lawrence Maguire, of &c., Gentleman, of no occupation	Five.
Nehemiah Oldham, of &c., Commercial Clerk	One.

Dated this —— day of ——, 18—.

Witness to the above signatures,

Philip Quinn,

100, —— Street,

Westminster.

(*x*) If the capital is intended to be divided into shares of different classes say :—

"5*a*. The capital of the company is £100,000, divided into 5,000 preference shares of £10 each, and 10,000 deferred shares of £5 each."

It was formerly the practice to add the words, "with power to increase such capital and to issue preferential or guaranteed shares as part or the whole of such increased capital."

But this is no longer necessary, except where Table A. is adopted : see *ante*, p. 340.

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THE COMPANIES ACTS, 1862 TO 1883.

Company limited by Shares.

ARTICLES OF ASSOCIATION of the —— Gold Mining Company Limited (*y*).

PRELIMINARY.

Exclusion of Table A. (*z*).

1. The regulations contained in the Table marked A. in the First Schedule to "The Companies Act, 1862," shall not apply to this company, except so far as the same are repeated or contained in these presents.

Interpretation clause (*a*).

2. In the construction of these presents, and of the memorandum of association of the company, the following words and expressions shall have the following meanings, unless a contrary intention appears, or is to be inferred from the subject or context:—

The company.

"The company" means "The —— Gold Mining Company, Limited."

The statutes.

"The Statutes" means and includes "The Companies Acts, 1862, 1867, 1877, 1880, and 1883," and every other Act from time to time in force relating to joint-stock companies with limited liability which apply to the company.

Special and extraordinary resolutions.

"Special Resolution" and "Extraordinary Resolution" mean resolutions of the company passed in accordance with

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(*y*) Having regard to the considerations that the preparation of articles of association is a somewhat special branch of conveyancing, and that such instruments are necessarily of great length, it has been thought well to insert in this work only one Precedent, which has been compiled by a careful comparison of numerous instruments in actual use. The Editor ventures to believe that the clauses in the text and the alternative clauses in the notes furnish the practitioner with all the provisions usually inserted in ordinary cases. Alternative provisions will also be found in Table A., *ante*, pp. 361 *et seq.* For other special provisions adapted to arrangements of a peculiar nature, reference must be made to works treating particularly of company conveyancing.

(*z*) As to the adoption of "Table A." with modifications in Articles of Association, see *ante*, p. 346.

(*a*) Interpretation clauses frequently contain definitions of numerous words and expressions used in the articles which appear to explain themselves sufficiently without any definition. The definitions given above will be found sufficient for ordinary purposes.

the provisions contained in the 51st and 129th sections of the Companies Act, 1862, respectively.

"These Presents" means and includes the memorandum of association, and these articles and all regulations of company for the time being in force. — These presents.

"The Register" means the register of members to be kept pursuant to the 25th section of the Companies Act, 1862. — The register.

"The Office" means the registered office for the time being of the company. — The office.

"Month" means calendar month. — Month.

"In writing" means written or printed, or partly written and partly printed. — In writing.

"Bankrupt" shall mean and include a person becoming bankrupt, or entering into or making any composition or arrangement, statutory or otherwise, with or without assignment of all his property for the benefit of his creditors generally; and "Bankruptcy" shall have a corresponding meaning. — Bankrupt.

Words in the singular number mean and include also the plural number. — Singular number.

Words in the plural number mean and include also the singular number. — Plural number.

Words denoting males include females. — Masculine gender.

Words denoting persons include corporations, companies, and partnership firms in the United Kingdom and elsewhere. — Persons include corporations, &c.

3. The directors shall [*or* may] forthwith adopt, on behalf of the company, and carry into effect an agreement dated, &c., and made between [A. B.], of the one part, and [C. D.], on behalf of the company, of the other part, with full power, nevertheless, for the directors at any time, or from time to time, to agree to any modification of the terms of such agreement, and to make and do all such instruments and things as may be necessary or expedient for the purpose aforesaid on behalf of the company. — Adoption of preliminary contract.

4. The business of the company shall be commenced as soon as the directors deem fit, notwithstanding the whole of the capital may not have been subscribed. — Commencement of business (*b*).

(*b*) This clause is, perhaps, unnecessary, as it would seem to be the better opinion that business may be commenced and calls

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5. The company may exercise all the powers of the Companies' Seals Act, 1864.

Companies' Seals Act, 1864 (*c*).

6. The office of the company shall be in London, or at such other place in England as the directors may from time to time think fit; and the directors may also establish branch offices at such places either in England or abroad as they may from time to time deem necessary or expedient for the purposes of the company's business.

Office and branch offices.

SHARES.

Issue of shares.

7. The shares shall be under the control of the directors, who may allot or otherwise dispose of the same to such persons, and either at a discount, at a premium, or at par, and generally on such terms and conditions, and at such time or times, as they may from time to time think fit, subject nevertheless to the stipulations contained in the said agreement with reference to the shares to be allotted pursuant thereto:

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made before the whole capital is subscribed, without any special provision in that behalf, but its insertion is advisable, as the point is not quite free from doubt: see *Ornamental Pyrographic Co.* v. *Brown*, 2 H. & C. 63; *McDougall* v. *Jersey Imperial Hotel Co.*, 2 H. & M. 528; but see *contra*, *Lyon's Case*, 35 Beav. 646; *Howbeach Coal Co.* v. *Teague*, 5 H. & N. 151. See also *North Stafford Steel Co.* v. *Ward*, L. R. 3 Ex. 172, where a strict construction was put on the articles so as to negative the power. In any case, the insertion of the clause may prevent dispute.

If such is the intention, the following clause may be substituted for that in the text:—

"4A. The business of the company shall not be commenced until one-half at least of the nominal capital shall have been subscribed."

Common Seals Act, 1864.

(*c*) The Companies' Seals Act, 1864, 27 & 28 Vict. c. 19, empowers companies regulated by the Companies Act, 1862, and carrying on business abroad, if expressly authorised by the articles or by special resolution, but not otherwise, to keep duplicate common seals in the foreign country or countries in which they carry on business, having engraved thereon the name of the place in which they are to be used: such seals must be entrusted to and used by persons specially empowered to use them by an instrument in writing under the common seal of the company. An instrument sealed with a duplicate seal by a person duly empowered in the place to which the seal applies, is as binding on the company as if sealed in England with the original common seal.

Provided always that the directors shall not apply any funds of the company in the purchase of its own shares.

Proviso (*d*).

8. The company may (i.) make arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls; and (ii.) accept from any member of the company, who assents thereto, the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him, or without any call having been made; and (iii.) pay dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Company may have some shares fully paid and others not, &c. (*e*).

(*d*) The Rules of the Stock Exchange (r. 131) require the articles to contain this restriction as a condition of granting to the company a settling-day, and a quotation of its shares in the official list. See as to trafficking in shares, *Re Dronfield, &c., Coal Co.*, 17 Ch. D. 76.

(*e*) The company may do any one or more of these things if authorised by its regulations as originally framed, or as altered by special resolution: see sect. 24 of the Act of 1867. As to the effect of this section, see the opinions of the Lords in *Oak Bank Oil Co.* v. *Crum*, 8 App. Ca. at pp. 74, 77, 99. The insertion of this and the three following articles is required where it is desired to take these powers *ab initio*: they may be subsequently acquired by the company at any time by special resolution, see *ante*, p. 336. It is now very usual to insert such clauses in the articles, and this practice seems generally advisable for the following reasons. These powers, if not given by the articles, can only be acquired by special resolution, the passing and confirming of which at a future date is more or less uncertain. Moreover, the proposal of such special resolutions may not improbably raise among the shareholders and the public an impression that matters cannot be going well for the company if such material alterations in its regulations are desired by the directors, and so feelings of distrust prejudicial to the interests of the company may be produced; whereas, if the powers have been given by the articles, such suspicions may be obviated or allayed by the consideration that it was contemplated on the formation of the company, that such powers should form part of its original constitution. It is also considered advisable by many persons of experience in such matters, that the policy most likely to advance the interests of a company is to give to its directors from the first the fullest powers possible with regard to the conduct of the business; and that if it should appear that the directors are likely to misuse their powers, the proper course is to remove them and replace them by others who command the confidence of the shareholders.

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9. The company may from time to time, whether all the shares for the time being authorized shall have been issued or not, [if the directors shall think fit,] modify the conditions contained in its memorandum of association, so as to increase its capital by the issue of new shares: [such aggregate increase to be of such amount, and to be divided into shares of such respective amounts issued either wholly or partially with or without any such guarantee or right of preference, whether in respect of dividend, or of repayment of capital, or both, or with or without any such other special rights, privileges, priorities, or advantages, or subject to any such provisions or conditions, and generally on such terms as the directors (in the absence of any directions from time to time given to them by a special resolution of the company, or so far as any such resolution shall not extend), may think expedient].

Company may increase capital by issue of new shares preferential or otherwise (*f*).

10. The company may from time to time, if and whenever the directors shall think fit, modify the conditions contained in its memorandum of association, so as to consolidate and divide its capital into shares of larger amounts than its existing shares, or convert its paid-up shares into stock.

Company may consolidate capital into larger shares (*f*), or convert shares into stock.

11. The company may from time to time, by special resolution, reduce its capital by the cancellation of unissued shares.

Company may cancel unissued shares (*g*).

12. Joint holders of a share shall be jointly and also severally liable for the payment of all instalments and calls in respect of such share.

Liability of joint holders of shares.

13. If two or more persons are registered as joint holders of any share or stock, any one of such persons may, unless the directors shall otherwise direct, give effectual receipts for any dividends, bonuses, or other moneys payable in respect of such share or stock.

One of several joint holders may give effectual receipts.

(*f*) If it is desired that the powers of the directors of increasing the capital should be restricted, by requiring the sanction of a resolution, special or otherwise (see *post*, p. 535), the words in brackets will be omitted, and the following words will be added at the end of the article:

Variation where directors' powers are restricted.

"Subject, nevertheless, to the provisions in that behalf hereinafter contained."

(*g*) An applicant for shares is bound from the time when notice of allotment is given or posted, even if it is not received by him: *Household Fire, &c., Insurance Co.* v. *Grant*, 4 Ex. D. 216. Until such notice is given or posted the application may be withdrawn, unless the articles otherwise provide: *Pellatt's Case*, 2 Ch. D. 527. See also *Harris's Case*, L. R. 7 Ch. A. 587; *Stevenson* v. *McLean*, 5 Q. B. D. 357; *Steel's Case*, 42 L. T. 11.

14. An application for shares, followed by an allotment, shall be deemed to be an acceptance by the applicant of the shares allotted, authorizing the directors to place the applicant on the register as a member of the company.

Application and allotment of shares to bind applicant.

15. The person or persons for the time being registered as the sole holder, or as joint holders of any share or stock, shall be deemed to be the absolute owner or owners of the entirety of such share or stock; and the company shall not be bound to recognize any trust, charge, or any equitable, partial, or other interest on the part of any other person or persons, except only as is by these presents otherwise provided; and no person shall be recognized by the company as entitled to any fractional part of a share.

Trusts not to be recognised (*h*).

16. All the shares in the company shall be numbered consecutively; and every share shall always be distinguished by the number originally attached thereto, notwithstanding surrender, or forfeiture; and certificates of title to shares shall be issued under the seal of the company, and signed by two directors, and countersigned by the secretary, or other person appointed for that purpose by the directors.

Issue of share certificates (*i*).

17. Every sole holder of shares or stock shall, without payment, be entitled to one certificate under the seal of the

Rights of sole holders of shares to certificates.

(*h*) By sect. 30 of the Act of 1862 it is enacted that—

"No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies under this Act and registered in England or Ireland."

Entry of trusts on register.

A trustee who is the registered holder of shares is personally liable in respect thereof: *Chapman and Barker's Case*, L. R. 3 Eq. 361. But the trustee is entitled to be indemnified by his *cestui que trust*: *Hemming* v. *Maddick*, L. R. 7 Ch. A. 395.

As to notice to the company by an equitable mortgagee of shares, see *Ex parte Stewart*, 13 W. R. 356; *Re Jackson*, L. R. 13 Eq. 354; *Société Générale de Paris* v. *Walker*, 11 App. Ca. 20.

(*i*) By sect. 31 of the Act of 1862, it is enacted that—

"A certificate, under the common seal of the company, specifying any share or shares or stock held by any member of a company, shall be *primâ facie* evidence of the title of the member to the share or shares or stock therein specified.

Certificate of shares or stock.

As to the objects of granting certificates, see the observations of *Cockburn*, C. J., in *Re Bahia, &c., Rail. Co.*, L. R. 3 Q. B. 595. See also as to the liabilities of companies and directors in issuing certificates, *Pickard* v. *Sears*, 6 A. & E. 469; *Cottam* v. *Eastern Counties Rail. Co.*, 1 J. & H. 243; *Freeman* v. *Cooke*, L. R. 2 Ex. 654; *Hart* v. *Frontino*, L. R. 5 Ex. 111; *Johnson* v. *Renton*, L. R. 9 Eq. 181; *Eaglesfield* v. *Marquis of Londonderry*, 4 Ch. D. 693.

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company, specifying the shares or stock held by him, and (in the case of shares) the amount paid up thereon, or the directors may, in their discretion, issue to such holder a separate certificate for each share held by him.

Rights of joint holders of shares to certificates.

18. Joint holders of shares or stock shall, without payment, be entitled to one certificate under the seal of the company, specifying the shares or stock held by them, and (in the case of shares) the amount paid up thereon, or the directors may, in their discretion, issue to such joint holders a separate certificate for each share held by them. The delivery of any such certificate to any one of the persons whose names stand on the register as joint holders of such share or stock, shall be sufficient delivery to all such joint holders thereof.

Issue of new certificates in place of such as are worn out, &c.

19. If any certificate shall be worn out, destroyed, or lost, it may be renewed on such proof being adduced as shall satisfy the directors of its being so worn out, destroyed, or lost, and of the title of the person applying for renewal, and on such indemnity as the directors shall deem adequate being given, and on payment of such sum, not exceeding 2*s.* 6*d.*, as the directors may from time to time prescribe.

Company's lien on shares (*k*).

20. The company shall have a first and paramount lien on all the shares or stock of which any person is the holder, or one of several joint holders, for all moneys owing to the company from him, either alone or jointly with any other person, whether such moneys shall have actually become due and payable or not; and where a share or stock is held by more persons than one, the company shall have a like lien thereon in respect of all moneys so owing to them from all or any of the holders thereof; and such lien shall extend to all dividends from time to time declared in respect of such shares or stock.

Enforcement of lien by sale (*l*).

21. Such lien may be enforced by a sale of all or any of the said shares or stock, without any consent or concurrence on the part of any person or persons entitled or claiming to be entitled to such shares or stock, or any part thereof: Pro-

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(*k*) As to effect of clauses giving the company a lien on shares, see *Re Lewis*, L. R. 2 Ch. A. 818; *Re Stockton, &c., Railway Co.*, 2 Ch. D. 101. See also Lindley, 684; Buckley, 413.

(*l*) A power to enforce the lien by sale should always be expressly given by the articles: see *New London and Brazilian Bank* v. *Brocklebank*, 21 Ch. D. 302.

vided always, that no sale shall be made until notice in writing of the amount of such indebtedness, and of the intention to sell, shall have been served on the holder or joint holders (as the case may be) of such shares or stock, and he or they shall have made default in paying the amount specified in the notice: Provided also, that the directors may, if they think fit, instead of selling the shares or stock, forfeit the same under the provisions hereinafter contained.

Application of proceeds of sale.

22. Upon any such sale as aforesaid, the directors shall apply the net proceeds thereof (after payment of any expenses of and incident to such sale) in or towards satisfaction of the moneys so owing as aforesaid to the company, and shall pay the balance (if any) to the former holder or holders of the shares or stock sold.

Protection of purchasers.

23. Upon any such sale as aforesaid the directors shall, without any consent from the former holder or holders of the shares or stock sold, transfer the same in the books of the company to the purchaser, who shall not be concerned to inquire whether such power of sale as hereinbefore mentioned has arisen, or as to the regularity or propriety of the sale or other application of the purchase-money: And a statutory declaration in writing that the declarant is a director or secretary of the company, and that a resolution of the board of directors was passed that such sale should be made, and that the sale has been duly carried out pursuant to these presents, shall, in favour of the purchaser, be conclusive evidence of the facts therein stated; and such declaration, together with a certificate of proprietorship of such shares or stock under the seal of the company, delivered to the purchaser, shall confer a good title as against all persons whomsoever, and shall exempt the purchaser from all liability in respect of his purchase-money.

Members to furnish names and addresses to company.

24. No member, other than the bearer of a share-warrant, shall be entitled to receive any dividend or payment on account of dividend, or bonus, or to vote, until he has given to the company particulars of his name and address, for the purpose of registration; And no member, other than as aforesaid, who shall change his name or place of abode, or who, being a female, shall marry, and no husband of such last-mentioned member, shall be entitled to receive any dividend or payment, or amount of dividend, or bonus, or to vote, until notice of the change of name or abode, or marriage,

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shall have been given to the company, for the purpose of registration.

No member to exercise rights, &c., until registered and payment of calls.

25. No member shall exercise any right or privilege as a member until he shall have been duly entered on the register, and shall have paid all calls or other moneys for the time being due and payable on every share held by him.

CALLS.

Power for directors to make calls.

26. The directors may from time to time, but subject to the conditions and provisions hereinafter contained, make such calls as they may think fit, upon the members in respect of all moneys unpaid on the shares held by them respectively.

Notice of calls.

27. One month's notice at least shall be given of the time and place appointed by the directors for the payment of every call. Any call may be made payable by instalments.

Interval between calls.

28. At least two months shall intervene between the times appointed for the payment of two successive calls; and no call shall exceed the sum of £—— per share.

Call made at time of resolution.

29. A call shall be deemed to have been made at the time when a resolution of the directors authorizing such call was passed.

Interest on unpaid calls (*m*).

30. If the call payable in respect of any share or instalment be not paid on or before the day appointed for the payment thereof, then (unless the payment of such call or instalment shall in the meantime have been postponed by the directors) the holder for the time being of such share shall pay interest for the unpaid call or instalment at the rate of 10 per cent. per annum from the day appointed for the payment thereof, to the time of actual payment.

Members in default disentitled from receiving dividends, or voting.

31. No member shall be entitled to receive any dividend or payment on account of dividends or bonus, or be entitled to vote, or to exercise any right or privilege as a member while any moneys due from him, either alone or jointly with any other person, in respect of any call or instalment, are unpaid: Provided always, that in postponing the payment of any call or instalment, the directors may from time to time, or at any time, restore to any member all or any of his rights or privi-

(*m*) As to whether this article will apply to calls made by the liquidation of a company, see *Re Welsh Flannel and Tweed Co.*, L. R. 20 Eq. 367.

leges in such manner and to such extent and on such conditions as they shall think fit.

Remedies of company in case of default in payment of calls.

32. If any member fails to pay any call or instalment, or any part thereof respectively, on the day appointed for payment thereof, the amount so unpaid, with interest as aforesaid, shall be deemed to be "moneys owing to the company," under Article 20 of these articles, or the company may at any time thereafter sue the defaulting member for the same.

Payment of calls in advance (*n*).

33. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys due upon the shares held by him beyond the sums actually called for, and upon the moneys so paid in advance, or upon so much thereof as from time to time exceeds the amount of the calls then made upon and due in respect of the shares on account of which such advances are made; the company shall pay such interest (if any) at a rate not exceeding —— per cent. per annum, as the member paying such moneys in advance and the directors may agree upon; but the amount for the time being in advance shall not be included, or taken into account in ascertaining the amount of the dividend or bonus payable upon the shares, in respect of which such advance has been made.

Interest on calls paid in advance.

34. In ascertaining at any time the sum available for dividend, a sum shall first be set apart sufficient to pay the interest for the time being owing for moneys paid in advance of calls or instalments.

Transfer and Transmission of Shares (*o*).

Form of instrument of transfer (*p*).

35. The instrument of transfer of any share shall be by instrument in writing, in such form as the directors may from time to time prescribe, and shall be executed both by the

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(*n*) This article is almost identical with Table A., cl. 7, *ante*, p. 361. It has not yet been determined whether it will authorise the company to pay interest on calls paid in advance, although no profits are made: see *Guiness* v. *Land Corporation of Ireland*, 22 Ch. D. 349.

(*o*) A transfer of shares takes place, where the ownership is changed by act of the parties, transmission is by devolution of law on death, bankruptcy, &c.: see *Bentham Mills Spinning Co.*, 11 Ch. D. at p. 904.

(*p*) See Table A., cl. 9, where a form of transfer is given, *ante*, p. 362.

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transferor and transferee, and the transferor shall be deemed to remain the holder of such share until the name of the transferee is entered in the register of transfers in respect thereof (*q*).

Registration of transfers.

36. Every instrument of transfer shall be left at the office to be registered in a book or books to be kept for that purpose, to be called "The Register of Transfers," accompanied by the certificate of the shares to be transferred and such other evidence as the directors may reasonably require to prove the title of the transferor, or his right to transfer the shares, and with the payment of such fee not exceeding 2*s*. 6*d*., as the directors shall from time to time determine. [And the transfer shall thenceforward be kept by the company.]

Power of directors to refuse to register transfers (*r*).

37. The directors may decline to register any transfer of shares on which the company has a lien, or [in the case of shares not fully paid up] any transfer of shares to a transferee not approved by them [*or*, without assigning any reason therefor].

Protection of directors as to registration of transfers.

38. In no case shall the directors be bound to inquire into the validity, regularity, effect, or genuineness of any instrument of transfer produced by a person claiming as transferee of any share in accordance with these articles; and whether they abstain from so inquiring, or do so inquire and are misled, the transferor shall have no claim whatever upon the company in respect of the share except for dividends (if any) previously declared in respect thereof; but the remedy of the transferor (if any) shall be only against the transferee or person claiming to be such.

As to keeping register of transfers.

39. The Register of Transfers shall be kept by the secretary under the control of the directors.

As to infants and married woman.

40. No infant shall be registered as the holder of a share, and no married woman shall be registered as such holder, except under the Married Women's Property Acts, 1870, or 1882.

Transmission of shares of

41. A parent, guardian, committee, husband, executor, or administrator of an infant, lunatic, female, or deceased holder

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(*q*) A transferee is, as between himself and the transferor, liable to indemnify the latter against calls made after he has transferred his interest in the shares: *Kellock* v. *Enthoven*, L. R. 9 Q. B. 241.

(*r*) As to the construction of clauses empowering directors to refuse to register transfers, see *Re Bentham Mills Spinning Co.*, 11 Ch. D. 900. See also *Moffatt* v. *Farquhar*, 7 Ch. D. 591.

of a share shall not, as such, be a member; but on satisfying the directors of his title, he may be registered as the holder of the share, or may transfer the share to a person to be approved by the directors. A trustee in the bankruptcy of a member shall not, as such, be a member; but on satisfying the directors of his title, may in like manner be registered or transfer the share.

infants, lunatics, &c. (*s*).

42. The transfer books may be closed during fourteen days immediately preceding each ordinary general meeting, and at such other times or time not exceeding fourteen other days in the whole, as the directors shall think fit.

Closing of transfer books (*t*).

Forfeiture and Surrender of Shares.

43. If any member fails to pay all or any part of the sum payable on allotment, or any call or instalment due from him on the appointed day, the directors may at any time thereafter, during such time as the sum, call, or instalment remains unpaid, serve a notice on him requiring him to pay such sum, call, or instalment, together with interest at the rate of 10 per cent. per annum, and any expenses which may have been incurred by reason of such default.

Notice of intended forfeiture on default in payment of calls, &c.

44. The notice shall name a further day on or before which such sum, call, or instalment, with interest and expenses, are to be paid, and shall also name the place where payment is to be made, and state that in the event of non-payment at or before the time and at the place appointed the shares in respect of which such sum, call, or instalment is payable will be liable to forfeiture.

Form of notice.

45. If after service of the said notice, default shall be made in payment of the said sum, call, or instalment on the day and at the place named in such notice, the directors may forthwith, or at any time thereafter, before payment of all moneys so payable as aforesaid, by resolution declare the share or shares

If notice is not complied with shares may be forfeited.

(*s*) As to the share of a bankrupt shareholder, see the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), sect. 50 (3), set out *ante*, tit. Composition, Vol. II., p. 454. It is very doubtful how far any clause in the articles would be operative in preventing a trustee in bankruptcy from requiring himself to be registered as a shareholder: see *Re Bentham Mills Spinning Co.*, 11 Ch. D. 900; *Ex parte Harrison*, 28 Ch. D. 363.

(*t*) Compare Table A., cl. 11, *ante*, p. 362.

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in respect of which such notice shall have been given, to be forfeited for the benefit of the company, and such share or shares shall be forfeited accordingly.

Forfeiture on default to qualify for registration.

46. When any person entitled by transmission to claim a share, and not having qualified himself according to these presents, either to be registered himself, or to have his nominee registered as the holder thereof, fails for —— months after being thereunto required by the directors so to qualify himself, such share may at any time after the expiration of that period be forfeited for the benefit of the company by a resolution of the directors to that effect.

Notice after forfeiture.

47. When any share is declared to be forfeited, notice of the forfeiture shall forthwith be given to the holder of the share, or the person entitled to claim the share, as the case may be, and an entry of such notice having been given, and of the forfeiture with the date thereof shall forthwith be made in the register: PROVIDED ALWAYS that this article shall be deemed to be merely directory, and that no forfeiture shall be in any way invalidated by any omission or neglect to give such notice, or make such entry as aforesaid.

Liability of members notwithstanding forfeiture.

48. Any member whose shares shall have been forfeited shall, notwithstanding the forfeiture, be liable to pay to the company all calls, instalments, interest, and expenses owing in respect of the shares at the time of the forfeiture, together with interest at the rate of 10 per cent. per annum on the amount so owing as from the date of the forfeiture until actual payment.

Effect of forfeiture.

49. The forfeiture of a share shall involve the extinction at the time of forfeiture of all interest in, and all claims and demands against the company, in respect of the share and all other rights and liabilities incidental to the share as between the member whose share is forfeited and the company, except only such of those rights and liabilities as are by these presents expressly saved, or as are by the statutes given or imposed in the case of past members.

Power for directors to remit forfeiture.

50. The forfeiture of any share may at any time before such share shall have been disposed of be remitted by the directors on payment by the defaulter of all moneys due from him to the company, and of all expenses occasioned by his default, and upon such further terms (if any) as they shall think fit; but such remission shall not be claimable as a matter of right.

51. The directors may, by agreement with any member, accept a surrender or cancel an allotment of any shares held by him upon such terms and conditions as the directors shall think fit.

Power for directors to accept surrenders of shares.

52. All forfeited and surrendered shares shall be the property of the company, and may, in the discretion of the directors, be either cancelled, sold, re-allotted, or otherwise disposed of upon such terms and in such manner as the directors shall think fit; and until disposed of, such shares shall be registered in the name of the company, or of some person or persons to be named by and in trust for the company: and the provisions contained in Article 22 hereof with regard to a sale of shares on which the company has a lien shall so far as applicable apply to the case of a sale of forfeited or surrendered shares.

Forfeited and surrendered shares to be the property of the company.

Conversion of Shares into Stock.

53. The conversion of any paid up shares into stock under Article 10 may be carried into effect at any time or times by the directors, with the sanction of the company, previously given in general meeting.

Mode of effecting conversion.

54. When any shares shall have been converted into stock the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests in the same manner and subject to the same regulations, in and subject to which shares in the capital of the company may be transferred, or as near thereto as circumstances will admit.

Transfer of stock.

55. The several holders of stock shall be entitled to participate in the dividends, payments on account of dividend, bonuses, and profits of the company according to the amount of their respective interests in such stock; and such interests shall in proportion to the amount thereof confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, and for other purposes as would have been conferred by shares of equal amount in the capital of the company: Provided always that none of such privileges or advantages except the participation in the dividends, payments on account of dividend, bonuses, and profits of the company shall be conferred by any such aliquot part of consolidated stock as would

Rights of holders of stock.

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not if existing in shares have conferred such privileges or advantages.

SHARE WARRANTS.

Power to issue warrants (*u*).

56. The company may upon the request in writing of the registered holder of any fully paid-up share or shares or of any stock, and at his expense issue a share-warrant stating that the bearer is entitled to the share or shares or stock therein specified; and the directors may from time to time provide, subject to such regulations and conditions as they shall think fit, for the payment of the future dividends on the share or shares or stock specified in such warrant.

Form of share-warrant.

57. Every share-warrant shall be issued under the seal of the company, and be signed by two of the directors and countersigned by the secretary, and shall specify such number of shares or amount of stock, and be in such words and form as the directors shall from time to time prescribe; the number originally attached to each share shall be stated in any share-warrant representing shares.

Bearers of share-warrants to be deemed members.

58. The bearer of a share-warrant shall subject, nevertheless, to the regulations and conditions for the time being applicable thereto, whether made before or after the issue of the warrant, be deemed to be a member of the company in respect of the share or shares or stock specified in such warrant, and shall have all the rights of a member in connection therewith.

Directors may prescribe conditions of issue of share-warrants.

69. The directors shall have full power, from time to time, to make, prescribe, rescind and vary regulations and conditions under which the bearer of a share-warrant shall be entitled to exercise his rights as a member of the company; and under which requests for share-warrants shall be made and warrants issued; and under which new warrants and coupons may be issued in the place of share-warrants, or coupons worn out, defaced, lost, or destroyed; and under which surrenders of share-warrants may be accepted, and the name of the holder

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(*u*) Sect. 27 of the Act of 1867 empowers companies, if authorised by their regulations as originally framed, or as altered by special resolution, to issue share-warrants. It is generally advisable to take such powers *ab initio*: see *ante*, p. 523, note (*e*).

entered on the register in respect of the share or shares or stock specified in the surrendered warrant.

Increase in Capital (*x*).

Power to increase capital.

60. The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or if no direction be given, as the directors think expedient.

Conditions of issue of new shares.

61. Shares in the original capital from time to time remaining unissued may, at the discretion of the directors, and new shares from time to time created may, with the sanction of a special resolution of the company, be issued with any such guarantee or right of preference whether in respect of dividend or of repayment of capital or both, or with any such other special privileges or advantages over any shares previously issued or then about to be issued, or with any such arrangement as to the amount of calls to be paid thereon, and the time of payment of such calls, or at such a premium, or with such deferred rights as compared with any shares previously issued, or then about to be issued, or subject to any such provisions or conditions, and generally on such terms as the directors, as respects such shares in the original capital, and as the company by special resolution, as respects any such new shares, may direct. Such special resolution must be passed and confirmed before the issue of the shares to which it relates, but may in the case of new shares be a special resolution passed and confirmed either contemporaneously with or at any time after the special resolution authorising the increase of capital, whereunder such new shares are created.

New shares to be offered to members.

62. Subject to any direction to the contrary, that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them; and such offer shall be

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(*x*) See as to increase of capital by issue of new shares, *ante*, p. 336. If the words inserted in brackets in article 9 are retained, articles 60, 61, and 62 will be omitted.

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made by notice, specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on receipt of an intimation from the member to whom such notice is given, that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company, provided that if, owing to the inequality in the number of the shares held by the members willing to accept the same respectively, any difficulty shall arise in the apportionment of such new shares, or any of them, among the members, or any of them, the same shall be determined and settled as the directors think fit.

New shares to be considered as capital.

63. Subject to any special rights, privileges, priorities, or advantages which may be attached to any new shares, under the powers hereinbefore contained, any capital raised by the creation of new shares shall be considered as part of the original capital; and such new shares shall be subject to the same provisions with reference to the payment of calls, and otherwise, as if such new shares had been part of the original capital.

Borrowing Powers.

Power for directors to raise money.

64. The directors may from time to time, as and when they shall think proper, raise and borrow any sum or sums of money for the purposes of the company: Provided always, that the aggregate amount owing as principal in respect of any sums so borrowed shall not, except with the sanction of a general meeting of the company, exceed two-thirds of the subscribed capital.

Modes of raising money.

65. The directors may raise any such sum or sums as aforesaid by mortgage of, or by debentures or debenture stock secured by, or other charge upon all or any part of the property, whether present or future of the company, including (if they shall so determine) its uncalled capital, or by bonds, bills of exchange or promissory notes, or by such other means and upon such terms and conditions in all respects as the directors shall think fit: and may from time to time pay off the sum or sums so raised or borrowed, and borrow again the money so paid off, or any part thereof, in manner aforesaid; and may from time to time renew any such bills, notes, or securities, as aforesaid.

General Meetings.

66. The first general meeting shall be held at such time, not being more than four months after the registration of the company, and at such place as the directors may determine. First general meeting.

67. Subsequent general meetings shall be held at least once in every year, at such time and place as may be determined by the company in general meeting; and if no other time or place be prescribed, a general meeting shall be held in the month of —— in every year, at such hour and place as may be determined by the directors. Annual general meetings.

68. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary meetings. Ordinary and extraordinary meetings.

69. The directors may, whenever they think fit, and they shall, upon a requisition in writing, signed by not less than —— in number of the members for the time being holding in the aggregate shares or stock to the nominal amount of one ——th of the issued capital for the time being of the company, convene an extraordinary general meeting: Every extraordinary meeting shall be held at such convenient place in England as the directors shall upon such occasion appoint. Holding of extraordinary meetings on requisition.

70. Any requisition so made by the members shall state fully the object of the meeting proposed to be called, and shall be delivered to the secretary, or deposited at the office. No resolution or other business than such as is stated in the requisition shall be submitted to, or considered by an extraordinary general meeting, convened otherwise than by the directors. Requisition to state object of meeting.

71. If the directors should neglect, for fourteen days after the delivery or deposit of a requisition to convene a meeting, in accordance therewith, the requisitionists or any other members according to the required number, and holding in the aggregate the required amount of capital in the company, may themselves convene and hold a meeting. On default of directors requisitionists may hold a meeting.

Proceedings at General Meetings.

72. Seven days' notice at the least, exclusive of the day of giving the notice, but inclusive of the day of meeting, specifying the day and hour and place of meeting, and, in the case of special business, the general nature of such business, shall Notice of general meeting.

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be given by circular served as hereinafter provided, or by advertisement, or in such other manner as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate any resolution passed at any meeting. Every such notice shall be signed by the secretary, or by such other officer as the directors may appoint, except in the case of a meeting convened by members in accordance with these presents, in which case the notice may be signed by the members convening the same, or by any five or more of them.

Business at general meetings.

73. All business shall be deemed special that is transacted at an extraordinary meeting, and also all business that is transacted at an ordinary meeting, with the exception of choosing a chairman (if necessary), sanctioning a dividend, and the consideration of the accounts, balance-sheets, and the ordinary reports of the directors and auditors.

Quorum.

74. Except as otherwise provided by these presents, no business other than the choice of a chairman (if necessary), and the declaration of a dividend shall be transacted at any general meeting unless a quorum of members is present when the meeting proceeds to business; and such quorum shall (except as is herein otherwise provided) shall be —— members personally present.

If no quorum, meeting to be dissolved, or adjourned.

75. If at the expiration of half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; but in any other case, it shall stand adjourned to the same day in the next week, at the same place, and to meet at the same hour as was appointed for the original meeting.

Members present at adjourned meeting though no quorum.

76. At any adjourned meeting, the members present, whatever their number or the amount of shares held by them, shall have power to decide upon all matters which could properly have been disposed of at the meeting from which the adjournment took place in case a sufficient number of members had been present thereat.

Chairman of meetings.

77. The chairman (if any) of the board of directors shall be entitled to preside as chairman at every general meeting of the company; but if there is no such chairman, or if at any meeting he shall not be present within fifteen minutes after the time appointed for holding the same, or if, being present, he shall be unwilling to preside, the members present

shall choose any other member of the company to preside as chairman at the meeting.

Power to adjourn general meeting.

78. The chairman of a general meeting may, with the consent of the meeting, adjourn the same from time to time and from place to place; but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

Mode of deciding questions at general meetings.

79. Subject to a poll being demanded as hereinafter mentioned, every question submitted to a general meeting shall be decided by a show of hands.

Evidence of passing of resolution, where a poll is not demanded.

80. At any general meeting (unless a poll on any resolution thereof be, immediately on the declaration by the chairman of the m eeting of the result of the show of hands thereon, demanded by at least two members, and also before the dissolution or adjournment of the meeting, by a written requisition, signed by at least ten members present, and entitled to vote at the meeting, and holding in the aggregate at least —— shares, and delivered to the chairman or secretary) a declaration by the chairman that a resolution is carried, and an entry to that affect in the minutes of the proceedings of the meeting shall be sufficient evidence of the fact so declared, without proof of the number or proportion of the votes given for or against the resolution.

Poll.

81. If a poll be demanded, it shall be taken in such manner, at such place, and either immediately, or at such time within seven days after the meeting as the chairman of the meeting directs, and the resolution determined by the result of the poll shall be deemed the resolution of the general meeting at which the poll was demanded.

Votes of Members.

Voting power.

82. On the taking of a poll, every member shall have one vote in respect of every full number of ten shares, or every full amount of £100 stock held by him, and registered in his name not less than one calendar month prior to the meeting. On a show of hands every member entitled to vote shall have one vote only as such member.

Casting vote.

83. In the case of an equality of votes either on the taking of a poll, or on a show of hands, the chairman of the meeting

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shall have a casting vote in addition to the votes or vote to which he shall be entitled as a member.

Members under disability.

84. If any member is a lunatic, idiot, or *non compos mentis*, he may vote by his committee, *curator bonis*, or other legal *curator;* and if any member shall be a minor, he may vote by his guardian, tutor, or *curator*, or any one of his guardians, tutors, or *curators*, if more than one. And any such committee, *curator bonis*, guardian, tutor, or *curator* may vote either personally or by proxy.

Joint holders of shares or stock.

85. Where several persons are joint holders of any share or shares, or of any stock, any one of such persons may vote at any meeting, either personally or by proxy, in respect of such share, or shares, or stock, as if he were the sole holder thereof; and if more than one of such joint holders shall be present at any such meeting personally or by proxy, then the one of the persons so present personally or by proxy whose name in the register shall precede the name or names of the other or others of them shall alone be entitled to vote.

Members in default not to be entitled to vote.

86. No member shall be entitled to attend or vote at any meeting while any calls, interest, or other moneys due from him alone or jointly with others in respect of any share or shares or stock remains unpaid.

Proxies.

87. Votes may be given either personally or by proxy in manner hereinafter provided.

Instrument appointing proxy (*y*).

88. The instrument appointing a proxy shall be in writing, under the hand of the appointor, or if such appointor is a corporation, under their common seal [and shall be attested by one or more witness or witnesses]: no person shall be appointed a proxy who is not a member of the company, and qualified to vote in his own behalf as such.

Deposit of proxies.

89. The instrument appointing a proxy shall be deposited at the registered office of the company not less than twenty-four hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the

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Proxies in blank.

(*y*) It has been held, that a proxy paper signed by a creditor in a composition under the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), leaving the name of the proxy in blank might be filled up by a person authorised verbally by the creditor so to do, and that the paper when so filled up would be valid: *Ex parte Lancaster*, 5 Ch. D. 911. The same rule would seem to apply to proxies to give votes at meetings of companies.

expiration of twelve months from the date of its execution.

90. Every instrument appointing a proxy shall be in the form to the effect following, or as near thereto as circumstances will admit:

The —— Gold Mining Company, Limited.

Form of proxy.

I ——, of ——, in the county of ——, being a member of the —— Mining Company, Limited, and entitled to one vote [*or* —— votes], hereby appoint —— of —— [*or* failing him, —— of ——; *or* failing him, —— of ——] as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the —— day of ——, 18—, and at any adjournment thereof [*or*, at any meeting of the company that may be held in the year 18—].

As witness my hand, this —— day of ——, 18—.

Signed by the said —— in the presence of ——.

Directors.

Number of directors (*z*).

91. The number of directors shall not be less than three nor more than nine.

First directors (*z*).

92. The first directors shall be [A. B.], of, &c., [C. D.], of, &c., and [E. F.], of, &c.; and such directors [and any added to their number as aforesaid] shall continue in office [with power to add to their number up to the maximum number mentioned in Clause 91] until the second ordinary general meeting of the company.

Filling up of vacancies.

93. Any casual vacancy in the number of directors may be filled by the directors by the appointment of any qualified person, but any person so appointed shall retain his office so long only as the vacating director would have retained his office if no vacancy had occurred; Provided always that the continuing directors may act notwithstanding any vacancy in their body.

Qualification of director (*a*).

94. The qualification of a director shall be the holding of at least 100 shares, or a corresponding amount of stock.

(*z*) See alternative clauses in Table A., cl. 52, 53, *ante*, p. 367.

(*a*) It is now not unusual to omit the qualification clause.

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Power of director to resign.

95. A director may at any time tender his resignation either by presenting at a meeting of the directors, or by delivering to, or leaving at the office for the chairman or secretary, a written notice of his desire to resign, but shall not vacate his office until after acceptance of his resignation by the directors.

Remuneration of directors.

96. The remuneration of the directors shall be such as shall from time to time be fixed by the company in general meeting, and shall be divided among the directors in such proportions and manner as the directors shall from time to time determine. Until an amount is so fixed, the directors shall serve without remuneration (*h*).

Allowances to directors for special services.

97. If any director shall be called upon to go or reside abroad on the company's business, or otherwise to perform

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(*h*) Or instead of the last part of article 96 the following clause may be inserted:—

Until an amount is so fixed there shall be paid to each of the directors, other than the chairman, the sum of two guineas, and to the chairman the sum of four guineas for every time when he shall attend a meeting of the directors.

Variations.

The following are alternative remuneration clauses:—

95A. The remuneration of the directors shall be the sum of £——, to be paid out of the profits, if sufficient for that purpose, or otherwise out of the capital [*or* out of the profits, if any,] of the company, which sum shall be divided among them in proportion to their respective attendances at meetings of the directors.

See as to payment of directors' remuneration out of capital, *Harvey Lewis's Case*, 26 L. T. 673.

95B. The directors shall receive as remuneration for their services in every year a sum equal to —— per cent. of the actual amount of dividends which shall in such year be earned and paid by the company, such sum to be divided, &c.

95C. The directors shall not receive any remuneration for their services in any year in which the dividends earned and paid by the company shall not amount to five per cent. of the subscribed capital. Each of the directors, other than the chairman, shall receive as such remuneration the sum of £200 in any year in which the said dividends shall amount to five per cent. of such capital, and an additional or further sum of £100 for every five per cent. of the said capital above ten per

extra services, the directors may arrange with such director for his special remuneration in respect of such services, either by way of salary or commission, or payment of a specified sum of money, as they shall think fit.

Rotation of Directors.

Rotation and retirement of directors (*c*).

98. At the second ordinary general meeting, and at the ordinary meeting in every subsequent year, one-third of the directors, or the next lowest number thereto, shall retire from office.

Mode of determining which directors shall retire.

99. The one-third of the directors, or the next lowest number, to retire at the second ordinary meeting, shall, unless the directors otherwise arrange among themselves, be determined by lot. In every subsequent year the directors to retire shall be those who have been the longest time in office, such time to be computed from his last election or appointment, if he has previously vacated office: And if any question shall arise as to which of several directors who have been the same time in office shall retire, it shall, unless the directors otherwise arrange among themselves, be determined by lot.

Directors to be re-eligible

100. Any retiring director, if duly qualified as aforesaid, shall be eligible for re-election [and shall be deemed to offer himself for re-election unless he shall have given to the company notice in writing of a contrary intention].

Notice of candidature.

101. A member, not being a retiring director, or a candidate of election recommended by the directors, shall not be eligible as a director unless not less than ten days nor more than one calendar month before the day fixed for the election of directors, there shall have been given to the company a notice in writing, signed by a member duly qualified to vote, of his intention to propose such first-mentioned member for election, and also a notice in writing signed by the member to be proposed declaring his willingness to be elected.

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cent. thereof which shall in any year be earned and paid as dividends.

In the absence of a remuneration clause, the directors are not entitled to any remuneration: *Dunstan* v. *Imperial, &c., Co.*, 3 B. & Ad. 125.

(*c*) Compare alternative provision in Table A., cl. 58, *ante*, p. 368.

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Power to increase or reduce number of directors.

102. The company may from time to time, in general meeting, increase or reduce the number [or alter the qualifications] of the directors, and may determine in what rotation such increased or reduced number shall retire from office.

Retiring directors to retain office, if no successors are appointed (*d*).

103. If at any general meeting at which an election of directors ought to take place, the places of the retiring directors, or some of them, shall not be filled up; the retiring directors, or such of them as shall not have their places filled up shall, unless the number of directors shall be reduced at such meeting, be deemed to have been re-elected.

Vacation of Office of Director.

When the office is to be vacated.

104. The office of director shall be vacated:—

(i.) If he accepts or holds any other office or place of profit under the company, except that of managing director, manager or agent of the company.

(ii.) If he becomes bankrupt (*e*).

(iii.) If he is found lunatic, or becomes of unsound mind.

(iv.) If he ceases to hold the number of shares or amount of stock required for his qualification (*f*).

(v.) If he is continuously absent from meetings of the directors for more than three consecutive months without special permission of the directors.

(vi.) On his retirement by rotation.

(vii.) If he tenders his resignation as aforesaid, and such resignation is accepted by the directors.

(viii.) If he is removed from office as hereinafter mentioned.

(ix.) If he is concerned in, or participates in the profits of any contract with, or any work done for the company, without declaring and setting forth in writing the nature of his interest, such declaration, if his interest then exists, to be made at the meeting of the directors at which such contract is determined on, or work ordered, and in any case

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(*d*) But for this clause the acts of a retired director, who continues to act, would be void as regards members of the company: *Garden Gully, &c., Co.* v. *McLister*, 1 App. Ca. 39.

(*e*) See the definition of "bankrupt" in the Interpretation Clause, *ante*, p. 521.

(*f*) If there is no qualification this section must be omitted.

at the first meeting of directors held after the acquisition of his interest.

(x.) If he holds any other office under the company, except that of managing director.

Provided always that no director making such declaration as aforesaid, shall vacate his office by reason of his being a member or director or officer of any corporation, company, or partnership which has entered into contracts with, or done any work for the company; or by reason of his being interested, either in his individual capacity or as member or director or officer of any corporation, company, or partnership in any adventure or undertaking in which the company may also have an interest: Provided nevertheless that in no case shall any director having any such interest as aforesaid vote in respect of such contract, work, adventure, or undertaking, and, if he so vote, his vote shall not be counted.

Power to remove director.

105. The company may, by an extraordinary resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint a qualified member in his stead; and the member so appointed shall hold office during such time only as the director in whose stead he is appointed would have held the same if he had not been removed.

Managing Directors.

Power to appoint managing director.

106. The directors may, if they think fit, from time to time appoint one or more of the directors for the time being to be managing director or directors of the company, either with or without any limitation as to the time during which he or they are to hold such office, and may from time to time dismiss him or them from such office, and appoint another director or other directors in the stead of the managing director or directors so removed or dismissed.

Vacation of office of managing director.

107. A managing director shall not, while he continues to hold such office, be subject to retirement by rotation, and he shall not be taken into account in determining the rotation of retirement; but in all other respects his office shall be vacated in the same events as would vacate the office of any director of the company, and upon the happening of any such event, except as aforesaid, he shall forthwith *ipso facto* cease to be a managing director.

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Filling up of vacancy.

108. In case of a vacancy in the office of managing director, the directors may either fill up the vacancy by appointing another director, or may discontinue such office as they think fit.

Remuneration of managing director.

109. The remuneration of any managing director shall from time to time be fixed by the directors, and may be by way of salary, commission, participation in profits, or by all or any of those modes of payment, and shall be in addition to and irrespective of his remuneration as director, and be treated as part of the working expenses of the company.

Powers and duties of managing directors (*g*).

110. The directors may from time to time confer upon a managing director, or managing directors for the time being, such of the powers exercisable by the directors as hereinafter mentioned, and for such time and subject to such conditions and restrictions as they shall think fit; and they may confer such powers, either collaterally with or in substitution for, or to the exclusion of, all or any of the powers of the directors in that behalf; and they may from time to time revoke, withdraw, qualify, or vary all or any of such powers.

Power to appoint managers, &c., in England and abroad.

111. The board may from time to time appoint any person, or firm, or company to be the representatives, managers, or agents of the company, in any place or places in the United Kingdom, or upon the Continent of Europe, or elsewhere, with such powers and at such remuneration as the board think fit.

Proceedings of Directors.

Meetings of directors.

112. The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as they think fit. [But no meeting of the directors shall be held out of England, except in pursuance of a resolution passed at a previous meeting of the directors held in England.]

Quorum.

113. The quorum necessary for the transaction of business at a meeting of the directors shall be three directors [present personally or by proxy, of whom two at least shall be] present personally. Such quorum present at any meeting shall have full power to exercise all or any of the powers, authorities,

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(*g*) In the absence of an express power, the directors cannot delegate their powers: see *Howard's Case*, L. R. 1 Ch. A. 561; *Harris' Case*, L. R. 7 Ch. A. 587.

and discretions by the regulations of the company for the time being in force vested in the directors generally.

Power to summon meetings.

114. Any director [*or* the chairman alone, or any two directors], may at any time summon a special meeting of the directors by giving to each of the other directors at least —— clear days' notice of such intended meeting.

Mode of deciding questions.

115. Questions arising at any meeting of directors shall be decided by a majority of the votes of the directors present personally [or by proxy]; every director shall have one vote. [A director may from time to time appoint another director as his proxy in voting at any meeting of directors, or adjournment thereof.] In case of an equality of votes the chairman, or acting chairman at the meeting, shall have a second or casting vote.

Chairman, deputy-chairman, &c., of board (*h*).

116. The directors shall from time to time elect a chairman [and may, if they think fit, elect a deputy chairman], for a year or for any less period; such chairman [*or*, in his absence, the deputy chairman] shall preside at all meetings of the directors; but if no chairman [*or* deputy chairman] shall be elected, or if at any meeting the chairman [and deputy chairman] shall not be present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

Appointment of committees.

117. The directors may from time to time appoint committees consisting of such member or members of their body as they think fit: [*or* to such other person or persons being a member or members of the company (*i*)], and may delegate to such committees any of their powers [except the power to make calls]; and may from time to time revoke such appointment, either wholly or in part, and either as to persons or

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(*h*) Sometimes this article runs as follows:—

"[A. B.] Esq. shall be the first chairman of the directors, and shall hold such office until the ordinary meeting of the company in the year 18—, or until he shall previously resign that office. And from and after such meeting or resignation, whichever shall first happen, the directors shall from time to time, &c."

(*i*) It seems doubtful whether, in the absence of a clause to this effect, the directors can pass a resolution without holding a board meeting: see *Collie's Claim*, L. R. 12 Eq. 258; *contra*, *D'Arcy* v. *Tamar, &c., Railway Co.*, L. R. 2 Ex. 158.

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purposes. The chairman of the directors (if any) shall be *ex officio* a member of all committees.

Powers and duties of committees.

118. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors. All acts done by any such committee in conformity with such regulations, and in fulfilment of the purposes for which it shall have been appointed, shall have the like force and effect as if done by the directors, and the directors shall have power to remunerate the members of any special committee, and to charge such remuneration to the current expenses of the company.

Proceedings of committees.

119. The meetings and proceedings of any such committee shall be governed by the provisions herein contained for regulating the meetings and proceedings of the directors, so far as the same are applicable, and are not superseded by the express terms of the appointment of such committees respectively, or by regulations made by the directors under the last preceding article.

Validity of acts of directors and committees, notwithstanding defects in appointment.

120. All acts done by any meeting of directors, or of any such committee as aforesaid, or by any person acting as a director or as member of such committee, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or committees or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to act as aforesaid.

Resolution in writing valid without meeting of directors.

121. A resolution in writing signed by all the directors, shall be as valid for all purposes whatever as a resolution passed at a meeting of the directors duly summoned and constituted.

Minutes (*k*).

Minutes of proceedings, &c., to be made.

122. The directors shall cause minutes to be made, in books provided for the purpose, of the following matters, that is to say:—

(i.) Of all appointments of officers and committees.

(*k*) This clause as to keeping minutes of proceedings is very usually inserted, but no such clause seems to be necessary except for the purpose of reminding the directors of their statutory duties

(ii.) Of the names of the directors present at every meeting of the directors, and of the members of committees appointed by the directors present at every meeting of such committees respectively; and for this purpose every director or member of a committee present at every such meeting shall sign his name in a book to be provided for that purpose.

(iii.) Of the resolutions and proceedings of all general meetings of the company, and of all meetings of directors and committees.

Minutes to be kept at the office.

123. Such minutes shall be kept by the secretary at the office, and, if purporting to be signed by the chairman of such meeting, or of the next succeeding meeting, shall be receivable, in the absence of proof or error, as evidence of the matters therein stated.

Copies of resolutions.

124. A copy of any special resolution, as entered on the minutes, shall be given to any member on payment of one shilling, or of such less sum as the directors may direct.

Powers of Directors.

General powers of the company exercisable by directors.

125. The business of the company shall be managed by the directors, who may carry on the same in accordance with

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in this respect, which are thus laid down by the 67th section of the Act of 1862 :—

Evidence of proceedings at meetings.

"Every company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had, and all appointments of directors, managers, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications."

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these presents and the memorandum of association, in such manner as in their judgment and discretion may seem expedient. The directors may, in so doing, exercise as well the powers and authorities expressly conferred on them by these presents, as also all such powers of the company as are not by the foregoing Act, or by these presents, directed or required to be exercised by the company in general meeting, subject nevertheless to any regulations of these presents, to the provisions of the foregoing Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Special powers of directors (*l*);

126. In particular, and without prejudice to the general powers conferred on the directors by the last preceding clause, and of other powers conferred on them by these presents, the directors may, in the management of the business of the company, do all or any of the following things, in the name and on behalf of the company, that is to say:—

to provide for costs of formation;

(i.) They may enter into such contracts or make such arrangements as they may deem expedient, for the purpose of providing for the costs of and incident to the promotion, formation, and registration of the company.

to acquire property, rights, &c.;

(ii.) They may purchase or otherwise acquire from time to time any real or personal property, rights, or privileges necessary or convenient for the purposes of the company, upon such terms, for such periods, and for such estates or interests therein as they may think fit.

(*l*) Many of the powers here specified necessarily belong to the directors as such by statute or otherwise, and others are expressly conferred by various provisions arranged under different heads in these articles. It is, however, a usual and convenient practice to collect together in one place a set of clauses expressly conferring such powers in a form to render them readily accessible for reference both by the directors themselves and by persons dealing with the directors in matters relating to the company.

(iii.) They may grant and accept leases or licences, and may buy and sell, either on account of the company or for a commission, all descriptions of property, real or personal, and deal with, sell, and dispose of property, real or personal, of the company, as they may deem expedient. — to deal with property;

(iv.) They may erect, construct, or otherwise provide any offices, buildings, engines, machinery, plant, furniture, utensils, and effects necessary or convenient for the purposes of the company. — to provide offices, machinery, &c.;

(v.) They may pay for any property, rights, or privileges acquired by, or services rendered to the company, either in cash or shares (to be treated as paid up in full or in part), or bonds, debentures, or other securities of the company, or partly in cash and partly in shares, bonds, debentures, or securities, or in such manner as they may deem expedient. — to pay for property in shares;

(vi.) They may bring, maintain, defend, compromise, and abandon any legal proceedings and claims or demands by and against the company, and the directors and officers thereof, and otherwise concerning the affairs of the company, and may refer any such claims or demands to arbitration, and may perform and enforce performance of the awards made upon any arbitration. — to bring and defend actions, compromise and refer to arbitration;

(vii.) They may give time for payment or satisfaction of, and accept compositions in respect of any debt due to, or any claim or demand of the company. — to accept compositions;

(viii.) They may give effectual receipts, releases, and other discharges for all moneys payable to, and all claims and demands of the company. — to give receipts;

(ix.) They may act in the name and on behalf of the company, in all matters relating to bankruptcies [and compositions and arrangements, whether statutory or otherwise, of the affairs of debtors to the company (*m*)]. — to act for company in bankruptcies

(x.) They may from time to time raise or borrow, in the — to borrow money;

(*m*) The words in brackets may be omitted if desired: see definition of "Bankruptcy" in the Interpretation Clause, *ante*, p. 521.

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name and on behalf of the company, such sums of money as they may think expedient by way of mortgage, or by bonds, obligations, debentures, bills, notes, scrip, certificates, or in such other manner as they may think proper, provided that the total amount for the repayment of which the company shall be liable in respect of sums of money so borrowed, shall not exceed at any one time the sum of £——.

to draw and accept bills, &c. ;

(xi.) They may, in the ordinary course of business, on behalf of the company, make, accept, draw, or endorse any bill of exchange, promissory note, banker's draft, bill of lading, or other such like instrument; but any such instrument shall be signed by at least two directors, and also by the secretary, or other person appointed for that purpose by a resolution of the directors.

to appoint and remove officers ;

(xii.) They may appoint and remove such officers (except the secretary and solicitors), clerks, agents, and servants of the company, for such periods and upon such terms and conditions as to salaries or emoluments, performance of duties, and security for such performance and otherwise, as they may think fit; and may also appoint any persons, firms, or companies to be the agents or attorneys of the company abroad with such powers (including the power to delegate such powers), and upon such terms and conditions as they may think expedient, and may determine or revoke such last-mentioned appointments as and when they may think fit.

to make bye-laws ;

(xiii.) They may from time to time make, vary, and repeal bye-laws for the regulation of the conduct of the business of the company, and of its officers, agents, and servants.

to invest moneys ;

(xiv.) They may, by way of temporary investment, invest any moneys of the company in or upon any of the securities or investments hereinafter mentioned.

to establish reserve and sinking funds ;

(xv.) They may, before recommending any dividend, set aside out of the profits of the company such a sum as they may think proper, as a reserve fund

to meet contingencies or to equalize dividends, or to replace lost capital, or to provide engines, machinery, or plant, or to erect or execute new buildings or works, or to repair, maintain, restore, or improve the property of the company, or as a sinking fund to pay off the mortgages, bonds, obligations, debentures, or other incumbrances of the company, or to meet claims against or liabilities of the company, or for any purpose which the directors in their discretion may think necessary for or conducive to the interests of the company; and may from time to time diminish the amount of such reserve and sinking funds respectively, for the purposes hereinafter mentioned; and may invest any sum set apart, and vary any investment thereof in manner hereinafter provided.

(xvi.) They may make and carry into effect any arrangements with respect to the union of interests or amalgamation, either in whole or in part, of the company with any other company or person. — to arrange for amalgamation;

(xvii.) They may enter into any contracts, negotiations, or arrangements for any of the purposes aforesaid. — to enter into contracts;

(xviii.) They may affix the seal of the company to and execute all such contracts, conveyances, mortgages, bonds, obligations, debentures, leases, exchanges, and other deeds and instruments, and execute all such acts and things as they may deem necessary or expedient for any of the purposes aforesaid, or generally for the purposes of the company. — to affix seal of company to instruments;

(xix.) They may exercise all the powers conferred by the Companies' Seals Act, 1864, which the company are themselves hereby authorized to exercise. — to exercise powers of Companies Seals Act, 1864.

Solicitors.

127. Messrs. ——, of, &c., or such other firm or person as the company shall from time to time by special resolution determine, shall be the solicitors of the company. — Appointment of solicitor.

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Secretary.

Appointment of secretary.

128. Mr. ——, of, &c., or such other person as the company shall from time to time by extraordinary resolution determine, shall be the secretary of the company: Provided always, that in case of the misconduct of the secretary, the directors may, if they think fit, suspend him from his office until the holding of a general meeting, at which his conduct may be considered by the company; and that in such case, or in case of the absence of the secretary through illness or unavoidable accident, or with the consent of the directors, a temporary substitute for the secretary may be appointed by the directors, who for the purposes of these presents shall be deemed to be the secretary.

Seal.

Custody of seal.

129. The directors shall provide for the safe custody of the seal, and such seal shall not be used except by the authority of the directors previously given, and every deed to which the seal is affixed shall be signed by two or more of the directors, and countersigned by the secretary for the time being, or by some other person to be appointed by the directors. The directors shall have power to alter and change the seal from time to time, but so that there be always subscribed thereon the name of the company, with the word "limited."

Dividends (*n*).

Right to profits.

130. The profits of the company shall, subject to any rights arising under any issue of shares upon special conditions,

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Variations.

(*n*) Where the original capital is divided into several classes of shares the following clauses (or some modification thereof) may be substituted for those in the text:—

130A. Subject to the provisions in these presents contained the directors may, with the sanction of the company at the ordinary general meeting, declare what is the amount of the net profits of the company applicable for the payment of dividends: Provided that no dividends shall be payable except out of profits arising from the company's business.

131A. Until the ordinary general meeting of the company, in the year 18 , or until such earlier time as the aggregate

belong to [*or* be applicable to the payment of dividend at the rate of 5 per cent. per annum to] the members in proportion

amount of the dividends payable on the ordinary shares shall have amounted, in the whole, to 50 per cent. on the amount from time to time paid or credited as paid thereon, the sum applicable for payment of dividend shall be applied as follows :—

1st. In payment of a preferential dividend of 10 per cent. per annum on the amount from time to time paid or credited as paid on the ordinary shares ; and for this purpose recourse is to be had, during the said five years, or such shorter time as aforesaid, to the sums applicable for dividend in any subsequent year or years of the said term, to make good any deficiency in any preceding year thereof.

2nd. In payment of a dividend of 10 per cent. per annum on the amount credited as paid on the said deferred shares ; and for this purpose recourse is to be had, during the said five years, or such shorter time as aforesaid, to the sum applicable for dividend in any subsequent year or years of the said term, to make good any deficiency in any preceding year thereof.

3rd. In payment of dividend, *pari passu*, as well on the deferred as the ordinary shares in the company, in proportion to the amount from time to time paid or credited as paid thereon.

132A. From and after the expiration of the said five years, or after the aggregate amount of the dividends payable on the ordinary shares shall have amounted, in the whole, to 50 per cent. on the amount from time to time paid or credited as paid thereon (whichever shall first happen), the sum applicable for payment of dividends shall be applied as follows :—

1st. In payment of a dividend of 10 per cent. for the current year, *pari passu*, as well on the deferred as the ordinary shares in the company, in proportion to the amount from time to time paid or credited as paid thereon.

2nd. In making up to the holders of deferred shares such excess of dividend (if any) as shall under the last

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to the amount paid up, or under any contract to be deemed as paid up upon the shares or stock held by them respectively [and the balance of such profits shall belong to and be divided among the members in proportion to their shares]; but no member receiving interest upon money paid by him in advance of calls or instalments shall be also entitled to participate in profits in respect of the money so paid in advance.

Declaration of dividend.

131. The company may in general meeting declare a dividend to be paid to the members according to their rights and interests in the profits, under the last preceding clause.

Restriction on amount of dividend.

132. No dividend shall be paid otherwise than out of the net profits arising from the business of the company, or shall be larger than shall be recommended by the directors, but the company may declare a smaller dividend to be paid than is recommended by the directors: Provided always, that the company shall not be precluded from declaring and paying a dividend out of the actual profits of any year by reason only of any depreciation or loss of the assets of the company, or of any expenditure properly chargeable to capital account, which depreciation, loss, or expenditure has not been made good, replaced, or repaid.

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preceding article have been paid to the holders of ordinary shares over the holders of deferred shares.

3rd. In payment of dividend, *pari passu*, as well on the deferred as on the ordinary shares in the company, in proportion to the amount from time to time paid or credited as paid thereon.

133A. In respect of repayment of capital and in all other respects save as hereinbefore otherwise provided, the deferred shares shall rank equally with the ordinary shares in the company, and so soon as the deferred shares rank equally for dividends with the ordinary shares, under the provisions of the preceding articles 133 and 134, the certificates of the said deferred shares, Nos. 1 to 7,500, may be exchanged for certificates similar to those of the ordinary shares in the company, but retaining the distinctive numbers originally attached thereto.

133. The statement of the directors as to the account of net profits available for dividend shall be conclusive (*o*).

Available profits, how ascertained.

134. Subject to the provisions herein contained with regard to the establishment of reserve and sinking funds, and otherwise, the directors may, of their own authority, but only out of what they may reasonably deem to be net profits, from time to time pay in advance to the members according to their respective rights and interests, such sums on account of dividends as they shall think fit.

Interim dividends (*p*).

Who entitled to dividends.

135. Every dividend and payment on account of dividend [and bonus] shall belong and be paid, subject to the lien of the company (if any), to those members who shall be on the register at the date fixed for the payment of such dividend, or to the legal representatives, notwithstanding any transfer of shares.

Joint holders.

136. Any one of several joint holders of shares or stock may give effectual receipts for dividends, bonuses, and payments on account of dividend in respect of such shares or stock.

Deduction on account of debts.

137. The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise. Notice of any dividend that may have been declared or be payable shall be given to each member as hereinafter mentioned.

Unclaimed dividends.

138. All dividends unclaimed for one year after having been declared, may be invested or otherwise made use of by the directors for the benefit of the company until claimed, and

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(*o*) Or, the following clause may be substituted for clause 133:—

"The amount of net dividends available for dividend shall be ascertained by and taken to be as shown upon a balance-sheet, approved by the auditors, of the affairs of the company as at the expiration of the period in respect of which the dividends shall be declared."

(*p*) The following article may be substituted or inserted in addition to article 134:—

Bonus.

"The directors may declare a bonus or bonuses out of the assets of the company, to be divided amongst the members, and to be treated for all purposes as dividends of the share for the year immediately preceding the ordinary general meeting, when such dividend shall be declared."

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all dividends unclaimed for six years, after having been declared, may be forfeited by the directors for the benefit of the company.

No interest on dividends.

139. No dividend shall bear interest as against the company.

Power to diminish reserve and sinking fund.

140. The directors may from time to time, diminish the amount of the reserve fund and sinking funds respectively, and may take any part thereof and carry the same to the profits of the company, divisible amongst the members in any year for the purpose of paying or increasing the dividends for that year, or paying a bonus or bonuses.

Investment of Moneys.

Power to invest moneys of company.

141. All moneys carried to the reserve and sinking funds, and all other moneys applicable for the benefit of the company and not immediately required for any payment to be made by the company may, at the discretion of the directors, be lodged on deposit with the bankers of the company, or in any joint stock bank, or may be invested by the directors in or upon the public stocks, funds, or securities of the United Kingdom, or of any British colony or dependency, or of any foreign government or state, or in stock of the Bank of England or Ireland, or of the Metropolitan Board of Works, or in or upon freehold, copyhold, leasehold, or chattel real, securities in England, Wales, or Scotland (but not in Ireland), or on the security of any moveable or immoveable property in any British colony or dependency, or in any foreign country, or upon the bonds, obligations, debentures, debenture stock, mortgages, or securities, or guaranteed, preference, or ordinary shares or stock of any company or public municipal or local corporation or authority in the United Kingdom, or any British colony or dependency, or any foreign country, or on the security of any rates or tolls levied by any such corporation or authority, as the directors may select, and may from time to time vary such investments; and the directors shall not incur any personal liability in respect of any such investment, except for wilful default.

Investment in names of trustees.

142. Any such investment as aforesaid may, if the directors so think fit, be made in the names or name of such trustees or trustee as the directors shall appoint or otherwise as the directors shall think fit.

143. All interest, dividends, and income arising from any such investment as aforesaid, shall be deemed to form part of the profits of the company, and be applicable accordingly.

Income from investments to be deemed profits.

ACCOUNTS.

144. The directors shall cause the banking accounts of the company [both in England and abroad] to be kept in the name of the company.

145. The directors shall cause true and complete accounts to be kept of the property, stock, effects, receipts, expenditure, credits, liabilities, transactions, and dealings of the company, and of all other matters necessary for manifesting the true state and condition of the company; and such accounts shall be kept in such books and in such manner as the directors shall think fit, and to the satisfaction of the auditors.

Accounts to be kept.

146. The books of account shall be kept at the office, or at such other place as the directors shall from time to time appoint; and the directors shall from time to time determine whether, and at what times, and in what manner, and subject to what restrictions, the books of account, and other documents of the company shall be open to the inspection of the members; and no member shall have any right to inspect any such books of account or documents, except as conferred by statute, unless expressly authorised so to do by the directors or by a resolution of the company in general meeting.

Books of account, and inspection thereof by members (*q*).

147. The financial year of the company shall be deemed to close on the 31st day of December in every year. But the first statement of the financial state of the company shall include the period between the registration of the company and the 31st day of December, 18—, and such statement shall be laid before the next succeeding ordinary general meeting. In every subsequent year a statement of the financial position of

Financial statement and balance-sheet.

(*q*) Compare alternative provisions in Table A., cl. 78, *ante*, p. 370. It is usual to impose some restriction on the right of shareholders to inspect the books, as an unlimited right of access would render the proper keeping of the account impossible. On the commencement of a winding-up the right of inspection given by the articles determines: *Re Yorkshire Fibre Co.*, L. R. 9 Eq. 650. Sometimes the following proviso is added to this article:—

"PROVIDED ALWAYS, that the ledger account of each member shall be open to his inspection at all reasonable times."

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the company shall be laid before the ordinary general meeting next succeeding the close of the previous financial year. Every statement of the financial position of the company shall be accompanied by a balance-sheet showing the property and liabilities of the company, and arranged in the form of the balance-sheet annexed to Table A. in the first Schedule to the Companies Act, 1862, or as near thereto as circumstances shall admit.

Copy of statement and balance-sheet to be open to inspection (*r*).

148. A copy of every statement and balance-sheet shall be open to the inspection of members at the office at least seven days previous to the meeting at which the same are to be submitted.

AUDIT.

Annual audit of accounts.

149. Once at least in every year the accounts of the company shall be examined, and the correctness of the statement of the financial position of the company and balance-sheet ascertained by two or more auditors.

Appointment of auditors.

150. The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the company in general meeting.

Casual vacancies.

151. Any occasional vacancy in the office of auditor may be supplied by the directors subject to confirmation at the next general meeting.

Remuneration of auditors.

152. The remuneration of the auditors shall be fixed from time to time by the company in general meeting.

Who may be auditors.

153. The auditors may be members of the company or otherwise, but must not hold any other office in the company, nor be interested otherwise than as members in any transaction of the company; nor shall any past director or other officer of the company be eligible as auditor for one year after his retirement from office.

Single auditor.

154. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(*r*) Or this article may be substituted for article 148:—

Variation.

148A. A printed copy of every statement and balance sheet shall, at least seven days previous to the meeting at which the same are to be submitted, be sent to each member in manner hereinafter provided with regard to the service of notices by the company.

155. Any auditor shall be re-eligible.

Auditors re-eligible.

156. If no election of auditors is made in manner aforesaid, the Board of Trade may, on the application of not less than —— members holding not less than —— shares in the aggregate appoint two or more auditors for the current year, and fix the remuneration to be paid to them for their services.

If no auditor elected, Board of Trade may appoint.

157. At least twenty-one days before the days appointed for every ordinary meeting, there shall be delivered by the directors to the auditors the statement and balance-sheet proposed to be laid before the meeting, and it shall be the duty of the auditors to examine the same with the accounts and vouchers relating thereto, and personally to inspect the securities and investments of the company.

Directors to submit statement and balance-sheet to auditors.

158. Every auditor shall at all reasonable times have access to the books, accounts, and vouchers of the company; and may, at the expense of the company, employ accountants and others to assist him in investigating the accounts, and he may, in relation thereto, examine any director or officer of the company.

Auditors to have access to books.

159. Within ten days after the receipt of the statement and balance-sheet, the auditors shall deliver to the directors their report in writing thereon. If the auditors dissent from or disapprove of the statement or balance-sheet, they shall particularly state in their report the reasons for such dissent or disapproval. The report of the auditors shall be read at every ordinary meeting together with the statement and balance-sheet prepared by the directors.

Report of auditors.

160. Every account of the directors, after having been audited and approved by the company in general meeting, shall be deemed to be final and conclusive, unless any manifest error shall be discovered therein within —— calendar months after such account shall have been approved, in which case the account shall be re-opened but only for the correction of such error.

Accounts when audited and approved to be conclusive.

Notices.

161. Whenever by these presents a notice or other document is required to be served by the company upon any member, such notice or document may be served either personally or by leaving the same or sending it through the post in a prepaid letter addressed to such member at his registered address. Whenever by these presents a notice or

Mode of service of notices.

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other document is required to be given to or served upon the company by any member, such notice or document may be served by leaving the same or sending it through the post in a prepaid letter addressed to the company at the office.

As to service on joint-holders.

162. All notices directed to be given to the members shall with respect to any share to which any persons are jointly entitled, be given to whichever of such persons is named first in the register of members, and notice so given shall be sufficient notice to all holders of such share.

Time and evidence of service.

163. Any notice, if served by post, shall be deemed to have been served on the day following that on which the letter containing the same was posted; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put in the post-office.

As to members resident abroad (*s*).

164. Any member residing out of the United Kingdom may name an address within the United Kingdom, at which all notices served at such address shall be deemed to be well served. If he shall not have named such an address he shall not be entitled to any notice.

As to holders of share-warrants (*s*).

165. The company shall not be bound to give any notice on holders of stock or share warrants.

Advertisement of notices.

166. All notices required by the statutes or by these presents to be given by advertisement shall be advertised in two daily newspapers published in London or Middlesex.

Transferee to be bound by notices.

167. Every person who, by operation of law, transfer, or other means whatsoever, shall become entitled to any share, shall be bound by every notice or other document duly served

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(*s*) Or the following articles may be substituted for articles 163, 164 :—

164A. Any member described in the register of members by an address not within the United Kingdom or the Channel Islands, or the Empire of Germany, and any holder of a share warrant who shall respectively give the company an address within the United Kingdom, at which notices may be served upon them, shall be entitled to have notices served upon them at such address.

165A. The directors may from time to time require any person claiming to be the holder of a share warrant who gives or had given an address as in the last preceding article mentioned, to satisfy them that he is or is still the holder of the share warrant.

in respect of such share, previous to his name and address being entered upon the register, upon the person from whom he derives his title to such share.

Notices to deceased members to be valid.

168. Any notice or document delivered or sent by post, or left at the registered address of any member as aforesaid, pursuant to these presents, shall, notwithstanding such member be then deceased, and whether or not the company have notice of his decease, be deemed to have been duly served in respect of any such share, whether held solely or jointly with other persons by such deceased member, until some other person be registered in his stead as the holder or joint holder thereof, and such service shall, for all the purposes of these presents, be deemed a sufficient service of such notice or document on his heirs, executors, or administrators, and all persons (if any) jointly interested with him in any such share and every of them.

Dissolution of the Company.

Power to dissolve company either absolutely or with a view to reconstruction or amalgamation.

169. The dissolution of the company may be determined by a special resolution for any purpose whatever, and whether the object be the absolute dissolution of the company, or the reconstruction or modification of the company, or the amalgamation of the company with any other company, or any other object; and upon any reconstruction, modification, or amalgamation, it shall be lawful for the liquidators to accept shares in any other company then constituted or thereafter to be constituted, in payment for the business and property of this company or any part thereof, and to distribute the same among the members of this company in exchange for their shares in this company; and in the event of any such arrangement no member of this company shall have any of the rights given to a dissentient member by the 161st section of the Companies Act, 1862, but every such member shall be bound to accept in exchange for his shares the shares appropriated to him in such other company as aforesaid, or shall be entitled by notice given to this company not later than fourteen days after the passing of the special resolution to require the liquidators to sell the shares in such other company appropriated to him as aforesaid, and to pay to him the net proceeds of the sale thereof, and such net proceeds shall in such case be accepted by him in full satisfaction of all claims and demands

XXVII. Articles of Association of Joint Stock Company.

against this company or the liquidators thereof in respect of his shares therein; and such sale may be made in such manner as the liquidators shall think fit.

Before absolute dissolution, members to have right of pre-emption of shares.

170. The absolute dissolution of the company shall take place whenever it shall be determined on as provided by the statutes, and according to the terms and conditions so determined on: PROVIDED ALWAYS that no absolute dissolution of the company, not being a winding-up by the court under the statutes, shall take place, if, at or before the general meeting at which the resolution to dissolve the company is passed or confirmed, as the case may be, any of the members enter into a binding and sufficient contract to purchase at par, on such terms as may be agreed on, the shares of all members who wish to retire from the company, and make sufficient indemnity of such members against the liabilities of the company.

Distribution of assets.

171. In the event of the absolute dissolution of the company the surplus assets (subject and without prejudice to the rights of holders of shares issued under any special conditions, shall belong to the members in proportion to the amount paid up or which ought to have been paid up on the shares held by them respectively at the commencement of the winding-up [*or* in proportion to the nominal amount of capital held by them respectively]: PROVIDED ALWAYS that it shall be lawful for the liquidators (whether voluntary or official), with the sanction of a special [*or* extraordinary] resolution, divide the surplus assets or any part thereof in specie among, or vest the same in trustees for the benefit of, the shareholders in the proportion aforesaid.

ARBITRATION.

Arbitration clause.

172. Whenever any dispute or difference shall arise between the company and any of the members, their executors, administrators, or assigns with respect to the meaning or construction of these presents or of any regulation of the company, or in respect of any act, deed, or thing done, executed, or omitted, or suffered in pursuance thereof, or of the statutes or the rights, duties, or liabilities of the company or any member, or otherwise relating to the affairs of the company, every such dispute or difference shall [*or*, may, if the directors shall so think fit] be referred to and determined by an arbitrator to be jointly appointed by the parties in

difference, and if they cannot agree upon a single arbitrator, then by two arbitrators, of whom one shall be appointed by each of the parties in difference, or the umpire of such arbitrators, pursuant to and so as in all respects to conform to the provisions of the Common Law Procedure Act, 1854, or any then subsisting statute modifying or substituted for the same. The costs of the reference and award shall be in the discretion of the arbitrator or arbitrators or umpire as the case may be, and shall be paid as he or they by the award shall direct; and this submission and the award shall be made a rule or order of the Chancery Division of Her Majesty's High Court of Justice on the application of any party.

MARGINAL NOTES.

173. The marginal notes to these presents are inserted hereby for convenience of reference and are not to be taken to control or affect the meaning, construction, or effect of these presents.

Marginal notes not to control text (*t*).

THE SCHEDULE ABOVE REFERRED TO.

[*Names, Addresses, and Description of Subscribers, &c., ut ante*, p. 519.]

(*t*) This article will, of course, be required only where notes are inserted in the margin of the articles indicating their respective contents. A more usual practice is to prefix to the articles a Table of Contents indicating the principal divisions and sub-divisions of matters treated of in the articles, by reference either to the numbers of each particular article or to the page on which it occurs.

XXVIII. *FORMS OF CLAUSES to be inserted in the* MEMORANDUM OF ASSOCIATION *of a* JOINT STOCK COMPANY.

(1.) FORMAL PARTS OF MEMORANDUM.

1. *Memorandum of Association of a Company limited by Shares.*

Company limited by shares.

1. The name of the company is "The —— Company, Limited."

2. The registered office of the company will be situate in England.

3. The objects for which the company is established are, &c.

4. The liability of the members is limited.

5. The capital of the company is £——, divided into —— shares of £—— each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares set opposite our respective names.

Names, addresses, and descriptions of subscribers, and number of shares taken by each subscriber [*ante*, p. 516].

2. *Memorandum of Association of a Company limited by Guarantee.*

Company limited by guarantee.

1. The name of the company is "The —— Association, Limited."

2. The registered office, &c.

3. The objects for which the company is established are, &c.

4. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding £——.

WE, the several persons whose names are subscribed, are

desirous of being formed into a company, in pursuance of this memorandum of association.

Names, addresses, and descriptions of subscribers (*u*).

3. *Memorandum of Association of an Unlimited Company, having a capital divided into Shares.*

1. The name of the company is "The —— Company."
2. The registered office of, &c.
3. The objects for which the company is established are, &c.

We, the several persons, &c. [*as in last form*].

(2.) Object Clauses, Common Forms.

1. To establish in the United Kingdom and abroad, and to regulate agencies for the purposes of the company. Agencies.

2. To adopt and carry into effect, with such modifications and alterations (if any, as shall be agreed upon), any agreement, dated, &c., and made between [*parties*]. Agreement, adoption of.

3. To enter into and carry into effect, with such modifications and alterations (if any) as may be agreed upon, an agreement in the terms of a draft agreement expressed to be made between [*vendor*], of, &c., of the one part, and the company of the other part, a copy whereof is, for the purposes of identification, endorsed upon [*or* annexed to] this memorandum. Agreement, entering into.

4. To make and carry into effect arrangements with respect to the union of interests or amalgamation, either in whole or in part, or working arrangements, or to enter into partnership with any other companies or persons carrying on any trade or business of a similar nature to that of this company. Amalgamation.

5. To make and carry into effect arrangements with landowners, railway companies, shipping companies, carriers, and other companies, firms, and persons, for any of the purposes of the company. Arrangements.

6. To draw, accept, indorse, and make bills of exchange, promissory notes, and other negotiable instruments. Bills of exchange.

7. To borrow or raise money for the purposes of the company, and to execute and issue bonds or debentures to Borrowing.

(*u*) If the company has a capital divided into shares, state the number of shares taken by each subscriber, *ut ante*, p. 516.

XXVIII. Memorandum of Association. Forms of Clauses.

bearer or otherwise, or debenture stock, mortgages, and other instruments for securing the repayment thereof, with or without charge upon all or any of the property of the company, including its uncalled capital for the time being, and upon such terms, as to priority or otherwise, as may be agreed upon, and as the company shall think fit.

Buildings, machinery, &c., erection of.

8. To erect, establish, construct, or acquire by purchase or otherwise, and to maintain, improve, or alter, all buildings, houses, fences, works, reservoirs, tanks, machinery, apparatus, and other things which may be necessary or convenient for the purposes of the company, and to stock and carry on any shops or stores for the benefit of the servants of the company.

Business, carrying on other.

9. To carry on, as incidental to the other objects of the company, any other trades or businesses which may seem to the company incidental or conducive to the said objects, or calculated, directly or indirectly, to increase the value of the property or rights of, or otherwise benefit the company. [*Or specify particular trades, ut post*, p. 573.]

Business, purchase of other.

10. To acquire, by purchase or otherwise, and take over, the whole or any shares of, or interest in any other trade or business, and with or without the goodwill thereof, which may be of a similar or analogous character to, or auxiliary to the business of the company, or connected therewith, or necessary or in any way conducive to the attainment of the objects of the company, and to acquire and undertake the whole or any part of the property and liabilities of any company, firm, or person carrying on such trade or business.

Business, sale of.

11. To sell any portion of the business or businesses of the company, or any agency connected therewith, to any other company or person.

Deposits, receipt of.

12. To receive money on deposit at interest or otherwise.

Distribution of assets.

13. To distribute any of the property of the company in specie.

Foreign registration.

14. To do all such things as may be necessary for procuring the company to be registered, or otherwise to acquire the legal status of a corporation in any foreign country or place.

Investment.

15. To invest and apply any moneys of the company not immediately required for the purposes thereof in or upon such funds, stocks, shares, or securities, and in such manner as the company may from time to time think proper.

Lending money.

16. To lend money to customers and persons having

dealings with the company and other persons, and to guarantee the performance of contracts by other persons.

17. To acquire, purchase, or work, and to obtain or acquire any licence or licences to use, rights, copyrights, or inventions which may be considered desirable for the interests of the company, and to grant licences for using the same; and to sell, assign, and dispose thereof. Patents (*x*).

18. To promote any other company for the purpose of acquiring all or any of the property and liabilities of this company, or of carrying on any trade, business or undertaking directly or indirectly conducive to the business, or likely to increase the value of the property or rights of this company; and to guarantee any debentures or other securities issued by such other company; and to take or otherwise acquire and hold shares therein. Promotion of other companies.

19. To purchase, take on lease, or exchange, hire, or otherwise acquire (in any part of the world), for any estate or interest, any hereditaments, houses, easements, monopolies, rights, privileges, or other real and personal property, and any roads, water rights, easements, and privileges, together with any patents or patent rights, plant and stock-in-trade, necessary or convenient for the purposes of the company. Purchase of property, rights, &c., generally.

20. To remunerate any company, firm, or person for services rendered to this company in placing the shares or debentures or other securities of this company. Remuneration for services.

21. To promote, make, provide, acquire, lease, work, use, and dispose of railways, tramways, and other roads and ways, for the more convenient access to and from any parts of any property of the company, or otherwise for the benefit, or supposed benefit, of any such property, and to contribute towards the expense of promoting, making, providing, acquiring, working, and using the same. Roads.

22. To sell, exchange, let, underlet, or otherwise deal with or dispose of, all or any parts of the undertaking, lands, hereditaments, and real estate, and any personal estate, property, and effects of the company, in such manner, on such terms, and for such purposes as the company may from time to time think proper. Sale.

23. To purchase, and accept surrenders of, and otherwise acquire, on such terms as may be agreed upon and the com- Shares of company, purchase of.

(*x*) See more elaborate clauses as to patents, *post*, p. 582.

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pany may from time to time think proper, any shares, stock, debentures, or other securities of the company.

Shares in other companies (*y*).

24. To purchase or take by way of consideration for any property sold or work done by the company, or otherwise to acquire, hold, and dispose of the shares or stock of any other company.

Ships.

25. To make, build, purchase, acquire, lease, sell, exchange, hire, charter, use, or let, piers, harbours, ships, tugs, and other shipping appliances, or contribute to the cost of the making or repairs thereof for any of the purposes of the company.

Trustees, to act as.

26. To undertake and execute any trusts in England or abroad, and either gratuitously or otherwise, the undertaking of which may seem directly or indirectly conclusive to the interests of the company.

The same.

27. To carry out and do all or any of the objects and things aforesaid in England or abroad, either as trustees, principals, agents, contractors, or otherwise, and by and through trustees, agents, contractors, or otherwise, and either alone or in conjunction with any other company, corporation, firm, or person.

General clause.

28. To do all such other things as are incidental or conducive to the attainment of the above objects or any of them.

(3.) Object Clauses, Special Forms. (*z*)

1. *Banking.*

To carry on banking business.

(*a.*) To establish and carry on the ordinary business of bankers in all its branches.

To receive money and valuables.

(*b.*) To receive money at call, or on deposit, at interest or otherwise, and either for fixed terms or otherwise, and to receive plate, jewels, and other valuables on deposit, or for safe custody.

(*y*) This clause is of somewhat doubtful validity: see Palmer's Company Precedents, 88.

(*z*) The special forms of object clauses in the text furnish examples adopted to companies formed to carry on particular kinds of business. It is a usual and convenient practice to state first in the object clause of the memorandum of association the special objects of the company, and afterwards to insert such other objects of a general nature as may be thought expedient: see Common Forms of Object Clauses, *ante*, pp. 567, *et seq.*

(*c.*) To lend money with or without security. To lend money.

(*d.*) To discount, negotiate, and deal in foreign and inland bills of exchange, promissory notes, drafts, and other negotiable instruments, and to transmit funds in specie or otherwise to any foreign state, and to arrange purchases or sales of any foreign or inland securities in the United Kingdom or abroad. To discount bills, &c.

(*e.*) To cash coupons and realise or undertake the management of dividends and interest of stocks, funds, shares, and securities of all descriptions. To cash coupons and realize dividends.

(*f.*) To hold, manage, improve, keep in repair, maintain, insure, and otherwise deal with, in such manner as may seem advisable, lands, buildings, and other real and personal property of all descriptions to which the company may become possessed or entitled by foreclosure or otherwise; and to purchase the equity of redemption in any property mortgaged to or charged in favour of the company, or any part, share, estate, or interest of or in such property; and to do all other such acts and things as may be necessary or convenient for realising and obtaining the full benefit of all securities or property on which any moneys of the company may be advanced. To hold, &c., property acquired by foreclosure or otherwise.

2. *Building Estate.*

(*a.*) To adopt [*or* enter into], &c. [*To adopt agreement see Common Form, clause* 1 *or* 2, *ante*, p. 567.] As to agreement.

(*b.*) To acquire and take over the interest of [*vendor*] in the land, houses, buildings, and ground-rents of the —— Estate, with their appurtenances, and to do all things necessary or expedient for deriving the full benefit of the interest so taken over. To acquire vendor's interest.

(*c.*) To purchase, take in exchange or on lease, rent, occupy, or otherwise acquire, and to sell, exchange, lease, or otherwise deal in freehold, copyhold, or leasehold lands, and hereditaments, estates, or other real or personal property and effects, or any rights, easements, grants, concessions, leases, or other interests, whether absolute or contingent therein, in the United Kingdom. To acquire and sell, &c., lands, buildings, &c.

(*d.*) To pull down and construct houses, shops, and other buildings (public or private), and to drain, pave, plant, build on, or otherwise lay out, improve, and appropriate all or any part of the freehold, copyhold, or leasehold lands and here- To pull down and construct buildings, and lay out lands.

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ditaments, from time to time acquired by the company for any estate or interest therein, and to manage, farm, cultivate, maintain, deal with, and generally dispose of, all or any part of such lands and hereditaments, and other the real and personal property and effects of the company.

To grant building leases, &c.

(*e.*) To grant building leases, or enter into building agreements, or other contracts or sub-contracts, with a view to the laying out, improving, building, altering, or pulling down, and either rebuilding or not, by any other person, any lands or buildings of the company, or in which the company may have an interest.

To construct and carry on works for supply of gas, &c.

(*f.*) To construct, execute, manage, or carry on, or to contribute in money or kind to the construction, execution, management, or carrying on of any works for the supply of gas, water, heat, or electricity to any property of the company, or of any other person, and the supplying of gas, water, heat or electricity accordingly.

To construct, carry on, and contribute to undertakings.

(*g.*) To construct, let, manage, or carry on, or to contribute in money or kind, or by taking shares in any other company, or otherwise, to the construction, letting, managing or carrying on of hotels, clubs, restaurants, baths, places of worship or of amusement, or of public resort, private or public hospitals, parks, gardens, stores, shops, tramways, boats, or other works or undertakings for the improvement of the district in which any lands or property of the company, or in which the company have or had an interest, are or have been situate.

To promote and oppose acts of parliament, orders, &c.

(*h.*) To promote and pay the expenses of establishing any companies for any of the purposes contemplated in this memorandum of association, and the application for or opposition to Acts of Parliament, Orders in Council, Provisional Orders, or other public sanction for the authorisation or facilitation, or (as the case may be) the interference with any of the said purposes, or for the regulation or local government of any lands, buildings, or works of the company, or in which the company may have any interest, or of any district in which such lands, buildings, or works may be situate.

To hold entertainments.

(*i.*) To hold public or private entertainments of every kind in or upon any of the buildings or lands of the company.

To carry on trades.

(*j.*) To carry on as incidental to the other objects of the company the trades of quarrymen, setters, makers or sellers of sand, lime, cement, stone, bricks, tiles, timber, hardware, and other building materials, house-painters and decorators,

general store-keepers, shop-keepers of any kind, licensed victuallers, hotel or restaurant-keepers, house-agents, tramway or omnibus proprietors, job-masters, livery stable keepers, carriage makers, undertakers, boat-builders, and carriers of passengers and goods, and any other trades or businesses which may seem to the company incidental or conducive to the said objects in all their branches.

3. *Cannon, Rifle, and Small Arms Manufactory.*

(*a.*) To adopt [*or* enter into], &c. [*See Common Forms, clause* 1 *or* 2, *ante*, p. 567.] As to agreement.

(*b.*) To carry on all or any of the following trades or businesses:— To carry on businesses.

(i.) The business heretofore carried on by the said [*vendor*].

(ii.) The manufacture, improvement, or alteration and sale of rifles and guns for military or sporting purposes, pistols, revolvers, smooth or rifled great guns, revolving cannon, mitrailleuses, and other weapons of offence or defence, and of all appurtenances or appendages thereof, or articles used in connection therewith, and of all kinds of munition or material of war, and of articles useful to or applicable to sporting purposes, or of all or any portions of the above-mentioned implements or things, whether made in accordance with any patent or patents or otherwise.

(iii.) The trade or business of engineers, founders, smiths, machinists, manufacturers and patentees of engines, boilers, machinery, tools, implements, weapons and all other articles made wholly or partially of steel, iron, or other metal or material, and of all or any portion of any such things as aforesaid, whether made in accordance with any patent or patents or otherwise.

(iv.) The trade or business of metal-rollers, smelters, and iron-workers.

4. *Coal Mining Company.*

(*a.*) To carry on at —— and elsewhere the trades or businesses of coal-masters, iron-masters, coke-manufacturers, To carry on business of coal-masters, &c.

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smelters, engineers, steel-converters, iron-founders, and brick and tile manufacturers in all their respective branches, and to make, purchase, hire, let, and sell railway and other plant, fittings, machinery, and rolling-stock, or any portions or parts of such articles, and to carry on any other operations or business which the company may, from time to time, deem expedient in connection with its main business for the time being.

To acquire mines, &c.

(*b.*) To purchase, take on lease or in exchange, hire, or otherwise acquire (either with or without the surface) any coal-mines, iron-mines, and other mines, mining ground, and minerals, clay, brick-earth, sand, and any lands or other property necessary to the advantageous possession and use of the mines or works for the time being owned or worked by the company, or any interest therein respectively, and to search for, get, work, raise, make merchantable, and sell, dispose of, and otherwise deal in coal, ironstone, clay, brick-earth, sand, and other ores, metals, minerals, and substances of the earth whatsoever.

(*c.*) To purchase and sell, as merchants, timber, coal, ironstone, metals, bricks, tiles, and any other materials, articles, or things relating to any of the above businesses, either on commission or otherwise.

5. Colonization.

To develop resources of estate.

(*a.*) To develop the resources of, and to improve, cultivate and otherwise turn to account, the said ——, and the lands, harbours, fisheries and resources thereof, in such manner as may be determined, and in particular by clearing, draining, fencing, planting, building, cultivating, farming, grazing and mining, by promoting emigration, establishing towns, villages, and settlements, encouraging fisheries, erecting and working saw-mills, corn, grist, and other mills, iron-foundries, forges, and factories, constructing, erecting, and maintaining harbours, piers, wharves, docks, shipyards, lighthouses, coaling stations, and any other useful works, constructing, maintaining, and working railways, tramways, telephones, electric light, roads, telegraphs, and other like works, and generally by establishing and doing such works and such acts of whatever nature, as the company may think useful for the development, colonization, and improvement of the said ——.

(*b.*) To carry on, and to grant to other people the right to carry on upon payment of rent, royalty or otherwise, the businesses of sporting and fishing in the said —— and the adjoining seas, and of curing fish, procuring and dealing in whale-oil, codfish-oil, seal-oil, or any other animal or any vegetable or mineral oils, and the businesses of farmers, graziers, preservers of meat, fruit, and other produce, growers of and dealers in cereals, roots, fruits, vegetables, and any other products of the soil, and the businesses of timber-growers and dealers, and lumbermen, and of quarrymen, workers of minerals of all kinds, brickmakers, carpenters, joiners, importers and manufacturers of portable houses, dealers in hides, skins, furs, wool, and other animal products, exporters and importers of goods and property of all kinds, and any other businesses connected with the cultivation, production, utilisation, and sale of the products of the said —— of every kind.

To carry on businesses.

(*c.*) To establish a fleet of steamers, sailing vessels, schooners, and boats for the service of mails and passengers to and from the said ——, and for fishing, freighting, and any other purposes, and either to employ the said fleet, or to let or dispose of the same or any part thereof to any other persons on any terms.

To establish fleet of steamers, &c.

(*d.*) To construct, manage, and control markets, hospitals, stores, school-houses, churches, hotels, libraries, houses, and public and private institutions and buildings of all kinds calculated directly or indirectly to improve or advance the prosperity of the said ——.

To construct public and other buildings.

(*e.*) To render services of any kind, by way of supply of stores or of salvage, or of coaling stations or otherwise, to any vessels trading with, or coming to or near the said ——.

To render salvage services, &c.

(*f.*) To buy produce from and sell goods to the inhabitants of the said ——, to act as agents for the sale of their produce, or for the investment, transmission, or collection of money, to lend money on security or otherwise, to receive deposits and generally to transact all kinds of banking and agency business whatever in respect of agricultural, commercial, or financial matters.

To deal in produce.

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6. *Cooperative Stores.*

(*a.*) To carry on the business of a cooperative society in all its branches.

To carry on business of cooperative society.

(*b.*) To purchase, sell, manufacture, and deal in every description of goods, stores, materials, articles, and effects.

To deal in goods.

(*c.*) To produce and supply for sale meat, poultry, eggs, milk, cheese, butter, fruit, vegetables, and other farm, dairy, and garden produce, and for such purposes to acquire farms, dairies, and market-gardens, with their appurtenances, either by purchase, lease, or otherwise, and to manage, cultivate, and conduct the same respectively, or any part thereof, either alone or in conjunction with others.

To produce and supply farm, dairy, and garden produce.

To receive money on deposit.

(*d.*) To receive money on deposit at interest or otherwise.

7. *Copper Mines (under a Concession).*

To acquire copper mines of concessionaires.

(*a.*) To purchase and acquire certain copper, sulphur, and iron mines, known as the —— Mines, in ——, formerly the property of the —— Government, and sold under the law of the National Assembly, dated the —— day of ——, 18—, to [*concessionaires*], together with all the works, buildings, constructions, machinery, stores, materials, and appurtenances thereto belonging, and all other the property and rights included in the said purchase, and holding and working the property aforesaid, or any part thereof.

To purchase concession for railway.

(*b.*) To procure and carry into effect a concession or decree from the Government of ——, for constructing a railway from the port of ——, in ——, to the said mines and to ——, or either of them, for carrying passengers, or goods, or both, and for constructing a wharf or wharves at the said port, and to work and use the same.

To take over concessions, &c.

(*c.*) To apply for and procure, or to purchase and take over, any concessions, contracts, or decrees for the purchase, lease, or working of any mines, beds, quarries, or deposits of coal, iron, or any other mineral, whether in —— or elsewhere, observing the terms and conditions of such concessions, contracts, and decrees, and to hold and work all or any of such mines, beds, quarries, and deposits.

To carry on business.

(*d.*) To carry on the business of workers, producers, buyers, and sellers of copper, sulphur, and iron, and of all ores thereof respectively, or any other minerals or natural deposits, and of

any combinations, manufactures, or products thereof, or therefrom.

(*e.*) To construct, purchase, take on lease, or otherwise acquire any furnaces, foundries, manufactories, or works of any kind, in any place whatever, for the melting, treatment, combination, or manufacture of any form of copper, sulphur, iron, steel, or the ores from which they may be obtained, or any other mineral, and working and carrying on the same. To construct or acquire furnaces, &c.

(*f.*) To construct, erect, and maintain, or contribute to construct, erect, and maintain, any houses, buildings, churches, schools, hospitals, and other establishments for the use and benefit of the workmen and others from time to time employed by the company, or on its works or property. To construct houses.

8. *Electric Light.*

(*a.*) To establish and carry on at ——, in the county of ——, the business of lighting by electricity in all its branches, and to construct, lay down, fix, and execute all necessary cables, wires, lines, accumulators, and to generate, accumulate, distribute, and supply electricity and light produced thereby in —— aforesaid, and elsewhere, to cities, towns, streets, squares, markets, docks, railway-stations, theatres, and other places of entertainment, galleries, halls, houses, shops, warehouses, and other buildings and places both public and private. To supply electric light.

(*b.*) To carry on the businesses of electricians, electric and mechanical engineers, and suppliers, contractors, and manufacturers of and dealers in electricity and electric apparatus, and appliances of every description required or capable of generating, accumulating, distributing, supplying, or employing electricity for the purposes of light, heat, or motive power, or for any other purpose. To carry on business of electricians, &c.

(*c.*) To enter into and carry out contracts for the distribution and supply of electric light, either on the company's own account, or by letting out such contracts to sub-contractors. To enter into contracts for supply of electric light.

(*d.*) To construct, manufacture, and supply motors, generators, accumulators, storage cells, dynamos, insulators, lamps, and other apparatus, appliances, material, and things required or capable of being used for the generation, accumulation, distribution, or supply of or otherwise in connection with electricity. To manufacture and supply electric apparatus.

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9. *Financial* (*a*).

To draw bills of exchange.

(*a.*) To draw, indorse, accept, discount, negotiate, buy, sell, and deal in foreign and inland bills of exchange, promissory notes, bonds, debentures, obligations, coupons, and other negotiable instruments in the United Kingdom, or abroad.

To carry on banking business.

(*b.*) To receive money on deposit at interest or otherwise, to open current accounts, give letters of credit, and cash, exchange, and deal in foreign and inland bank-notes, cheques, and coupons.

To lend money on real and personal securities.

(*c.*) To make advances of money on the security of real or leasehold property, or of cash, credit, or other accounts, policies, bonds, debentures, bills of exchange, promissory notes, letters of credit, and other obligations, or of rates or tolls of trustees, or commissioners of public docks, harbours, canals, or other public works, or of any other body of persons, whether corporate or otherwise, duly authorized to make, levy, and collect rates or tolls under the provisions of any local or general Act of Parliament.

To lend money on deposit of deeds, &c.

(*d.*) To advance money on the deposit of title-deeds of and securities on property in possession or reversion, contracts, agreements, concessions, covenants, bills of sale, bills of lading, delivery orders, warehousemen's and wharfinger's certificates, dock warrants, and other mercantile documents, symbols, or tokens; on bullion, Government or public stocks or funds, whether of the United Kingdom, or of any colony or dependency thereof, or of any foreign Government or State, on exchequer and navy bills, Bank and East India Stock, stocks and shares of bankers, banking companies, insurance companies, railway, canal, dock, and joint-stock companies, corporations, associations, and other undertakings of whatever nature or description, and whether inland, colonial, or foreign; on ships, goods, merchandise, materials, produce, works, plant, chattels, debts, and other choses in action, articles, and effects, and on any other property of whatever kind or description.

To make advances with or

(*e.*) To make advances to customers, contractors, and persons employed from time to time by the company either with

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(*a*) The above form is adapted to the case of a financial business of an extensive character; in the case of a mere loan and discount company several of the clauses will be omitted as inappropriate.

or without security, for the purpose of promoting or carrying out any undertakings, works, contracts, or purposes in which the company has directly or indirectly any interest or calculated in any way to be of advantage to its property or business.

(*f.*) To contract for, arrange, negotiate, and carry out and subscribe for and contribute to loans of every description, and in particular loans to any Government, State, Power, country, municipal corporation, or other public authority, whether of the United Kingdom or of any colony or dependency thereof, or of a foreign State.

without security to customers, &c.

To contract for and arrange loans.

(*g.*) To make purchases, investments, sales, and other dealings of and in all descriptions of freehold, leasehold, and other properties, and of produce or merchandise, bullion or specie, and of stocks, shares (including shares issued through the agency or guaranteed by the company), bonds, mortgages, debentures, or obligations, on the company's own account, or for a commission (not being purely speculative transactions for the rise or fall in prices, and in which it has no other interest, nor time bargains intended to be settled by a difference, nor being the undertaking of the ordinary business of a stock-broker or stock-jobber), and to reissue any such stock, shares, or other securities, with or without the company's guarantee.

To purchase real and personal property and deal in shares, &c.

(*h.*) To apply for and obtain for the company, either alone or in conjunction with any other companies, corporations, firms, and persons, and to assist other companies, corporations, firms, or persons, in applying for and obtaining Acts of Parliament, provisional or other orders, concessions, or authorizations for the construction and carrying out of railways and other undertakings or works, public or otherwise, either in the United Kingdom or abroad, and to make, either alone or in conjunction with other companies, corporations, firms, or persons, the advances or deposits of money by way of caution or otherwise necessary to obtain and carry out the said several objects.

To obtain acts of parliament, orders, concessions, &c.

(*i.*) To acquire, by purchase or otherwise, and take over, concessions of, and to lease and work railways and other undertakings and works, and to construct and carry out the same respectively, either alone or in conjunction with any other companies, corporations, firms, or persons, and to make them over, either wholly or in part, to other companies, corporations, firms, or persons.

To take over concessions.

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(*k.*) To enter into contracts and to carry them out, either on the company's own account or by letting them out to sub-contractors.

To take and carry out contracts.

(*l.*) Generally to transact any business of bankers, money-changers, bullion and exchange brokers, merchants, contractors, concessionaires, financiers, and capitalists as principal or agent in the United Kingdom, or in any other part of the world which may not in the articles of association or by special resolution of the company be prohibited.

To carry on business generally.

10. *Hotel.*

To establish and carry on hotel.

(*a.*) To establish and carry on a hotel at —— in the county of —— or elsewhere as may be determined.

To acquire land and buildings.

(*b.*) To purchase, take on lease, or otherwise acquire at —— aforesaid or elsewhere land, buildings, and other hereditaments, or any estate or interest therein, for the purpose of establishing thereon or therein the said hotel.

To erect and alter buildings, &c., for purposes of hotel.

(*c.*) To erect new buildings and alter existing buildings on any land acquired by the company and for the purpose of establishing, fitting up, and carrying on therein the said hotel, with or without mansions or shops, and with all proper approaches, stables, outbuildings, pleasure-grounds, and other conveniences and appurtenances, and to decorate, maintain, lay out, fit up, and furnish the same respectively.

To let buildings in whole or in part as apartments, &c.

(*d.*) To let on lease or otherwise all or any of the buildings for the time being acquired or held by the company, and in particular to let out all or any part of such buildings in apartments or separate rooms, furnished or unfurnished, and with or without attendance and other conveniences, and for such terms and upon such conditions and generally in such manner as the company may think proper.

To carry on business.

(*e.*) To carry on the business of keepers of hotels, taverns, restaurants, and lodging-houses, licensed victuallers, wine, beer, and spirit merchants, cigar and tobacco merchants, importers and brokers of every description of foreign and colonial produce, bath proprietors, laundrymen, hair-dressers, perfumers, job-masters, livery stable keepers, theatrical and opera box-office proprietors, warehousemen, carriers, agents for railway companies, and general agents, and any other trade or business which may seem convenient to be carried on in connection with the above-mentioned businesses or any

of them, or calculated directly or indirectly to increase the value of the property, or rights of, or otherwise benefit the company.

11. *Ironworks.*

To acquire iron mines.

(*a.*) To acquire by purchase or otherwise from [*vendor*] certain land in the parish of ——, in the county of ——, and the iron-stone and iron ore lying within and under the same, and the lease thereof, and the rights, privileges, easements, and appurtenances belonging thereto, now known as the —— Ironworks, and the mining-works, plant, machinery, and effects being thereon, or used in connection therewith, and any other lands, mines, and minerals in the said county of —— or elsewhere, or any rights or interests therein.

To acquire works, machinery, &c.

(*b.*) To purchase, erect, or construct any smelting-works, mills, canals, roads, tramways, engines, machinery, plant, iron ore or other stock or any buildings, or works, or things useful in connection with such mining property, and to work the same.

To work mines.

(*c.*) To work and get, and also to prospect for mines and minerals, and to trade and deal in the same.

To smelt metals.

(*d.*) To carry on the process of smelting or reduction of mines and minerals, and any processes involved in the making metals or minerals merchantable or marketable.

12. *Mineral Manure and Land Reclamation (abroad).*

To search for mineral salts.

(*a.*) To sink borings in search of, or otherwise to prospect or search for, any mineral salts, coal, or other minerals in the neighbourhood of —— aforesaid or elsewhere in ——, or upon the continent of Europe, and to apply for, and take in the name of the company or otherwise, any concessions to which the company may become entitled as the result of any such borings, prospecting, or search, and generally to acquire by purchase or otherwise any such acts, grants, and concessions as the company may from time to time deem it desirable to obtain for the interests of the company.

To acquire mines.

(*b.*) To purchase, lease, or otherwise acquire, and for any estate or interest therein, any mines, collieries, mining property, and minerals of any description.

To deal in mineral salts.

(*c.*) To search for, extract, work, make merchantable, buy, sell, and deal in potash and other mineral salts, and chemical

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manures, and coals, minerals, metals, and metallic substances of every kind, and the products thereof respectively.

To reclaim waste lands.

(*d.*) To reclaim moorlands or other sterile, uncultivated, or unproductive lands, by the application of potash and other salts and chemical manures and otherwise, and for this purpose to enter into and carry into effect any contracts or arrangements with landowners and others for the reclamation of any such lands upon any terms that may be agreed upon, and to purchase, take in exchange, or on lease, or otherwise acquire, for any estate or interest.

To carry on business.

(*e.*) To carry on the trades or businesses of miners and manufacturers of and dealers in mineral salts and chemical manures, and the business of the reclamation of moorlands and other lands in manner aforesaid.

13. *Patent Sewing-Machine.*

To purchase patent of sewing-machine.

(*a.*) To purchase letters patent, inventions, rights and privileges (whether subject to royalty or otherwise), in connection with sewing-machines, or any part interest in such letters patent, whether in the United Kingdom, the British Colonies, the United States of America, or abroad, and in particular to enter into an agreement either with or without modification, with [*vendor*] for the purchase of certain rights in respect of an invention for sewing-machines, the draft of which has already been prepared and has been initialled for the purpose of identification by three of the subscribers hereto.

To carry on business of sewing-machine makers, &c.

(*b.*) To carry on, either in the United Kingdom, the British Colonies, the United States of America, or abroad, the business of sewing-machine manufacturers and mechanical engineers, and to manufacture and produce and trade and deal in sewing-machines and all or any kind of apparatus and appliances, whether used or which hereafter may be used in connection therewith, and whether in connection with any invention now known or hereafter to be discovered.

To acquire licences to use other patents.

(*c.*) To acquire, by purchase or otherwise, any licence or licences, to use any patent or patents in the United Kingdom or any portion thereof, or elsewhere out of the United Kingdom, relating to or which may be deemed to be of use in connection with the objects of the company or any of them.

To apply for

(*d.*) To apply for, and to purchase and acquire (whether

subject to royalty or otherwise) letters patent for inventions, or improvements in any invention which may be considered conducive to the attainment of any of the objects of the company, or in any way connected therewith, or any interest in any such inventions or patents, and any licence or licences in connection with any such inventions or patents.

patents for inventions.

(*e.*) To register any patents relating to any business of the company, and to obtain exclusive or other privileges in respect to the same, in any part of the world, and to apply for, acquire, exercise, use, or otherwise deal with any patent rights, licences, brevets, concessions, monopolies or other privileges, either in Great Britain or any other part of the world.

To register patents.

(*f.*) To sell, let, or grant any patent rights or privileges belonging to the company, or which may be acquired by it, or any interest in the same, and to grant licences for the use and practice of the same, or any of them, and to let or allow to be used, or otherwise deal with any inventions, patents, or privileges in which the company may be interested, and to do all such acts and things as may be deemed expedient for turning to the fullest account the inventions, patents, and privileges in which the company is or may be interested.

To sell or grant patent rights.

14. *Railway* (*under Concession from a Foreign Government*).

(*a.*) To take over and carry into effect the concession of the —— government, dated the —— day of ——, 18—, granted to [*concessionaire*] authorizing the construction and working of a railway from A. to B. [so far as the same relates to and authorizes the construction and working of the first section of such railway, being a line from A. aforesaid to C., but without taking over the other parts of the said concession, and without taking over the rights or claims of the said [*concessionaire*] to guaranteed interest and other moneys to be paid by the —— government to the said [*concessionaire*] as provided by the said concession, and with power, upon taking over the portion to be so taken over of such concession, to give an option to the said [*concessionaire*] to repurchase the same at a fixed price or otherwise.

To take over concession for construction of railway.

(*b.*) To construct the said first section of the extension authorized by the said concession, such first section being an extension line of railroad or railroads from the present terminus at —— to —— with the stations, signals, tele-

To construct railway.

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graphs, and other works and appurtenances necessary or convenient for the same, so that the same may be capable of being worked and used as a continuous route in connection with the existing line from —— to ——.

To lease railway when completed.

(*c.*) To grant a lease of the same extension line, with the appurtenances, when completed to the said [*concessionaire*] for a term of years expiring in the year ——, at a clear yearly rent of £——, and upon such other terms and conditions as may be thought advisable, and particularly with power in such lease to give the said [*concessionaire*] a power of purchasing the demised premises and the reversion therein at a fixed price or otherwise.

To work the line.

(*d.*) To maintain, work, and use the said —— line in case the said proposed lease shall not be granted, or shall from any cause determine, or until such lease shall be granted.

To work other lines.

(*e.*) To construct, maintain, work, and use all or any other railroads of the —— government which may be hereafter conceded to the company, or leased to, or bought, or taken to by it, including particularly the further sections or lines authorized by the said concession.

To work other communications.

(*f.*) To organize or work every or any description of communication in connection with the said railroads, or any of them.

To carry on business.

(*g.*) To carry on the general business of a railroad company, and to grant, accept, and enter into leases, working arrangements, licences, and contracts of or with regard to the said railroads and business, or any of them, with the said [*concessionaire*], and to vary the terms of such leases, arrangements, licences, and contracts, or any of them, including the lease referred to in clause (*c.*).

To acquire lands, &c.

(*h.*) To acquire by purchase, lease, or otherwise, any lands, mines, forests, plant, machinery, telegraphs, rolling-stock, stores, materials, and things necessary or convenient for the above purposes or any of them. And to construct and maintain all buildings and other works necessary or convenient for the above purposes or any of them.

To sell property of company.

(*i.*) To sell any railroads or other property of whatever kind belonging to the company in such manner and upon such terms and conditions and for such purposes as may be thought advisable.

15. *Single Ship.*

To purchase or otherwise acquire, own, and work the steamship *Waterloo*, and to equip, freight, repair, sell, and let on hire and trade with the said steamship.

To purchase the steamship *Waterloo*.

To purchase or otherwise acquire from time to time any other steamship or steamships, but so that the company shall not own or work more than one steamship at any one time.

To purchase other steamships.

To purchase, produce, render marketable, sell and deal in coal, timber, live stock, meat, corn, or any other produce or merchandise whatever.

To purchase coal, merchandise, &c.

To convey and carry passengers, goods, produce, and merchandise of every description between such ports in any part of the world as the company may determine.

To carry passengers and goods.

To apply for, obtain, enter into, and carry out concessions and contracts from or with any government, state, or power, for the carriage of troops, munitions of war, stores, or mails, and to acquire subsidies in relation to such carriage.

To contract for carriage of troops, mails, &c.

To carry on the businesses of shipowners, barge and boat owners, carriers by land and water, forwarding agents, lightermen, wharfingers, warehousemen, merchants, storekeepers, underwriters, and insurers of ships, goods, and other property.

To carry on businesses.

16. *Trading Company.*

(*a.*) To purchase and acquire upon the terms and conditions specified in the draft of an indenture intended to be made between [*parties*] (a copy of which draft is set forth in the Schedule annexed to the articles of association of the company registered herewith), of the goodwill of the business of —— carried on by the said [*vendor*] under the style of "[*vendor*] and Company," and the stock-in-trade and other property of the business mentioned in the said draft indenture.

To acquire vendor's business.

(*b.*) To carry on in the United Kingdom and elsewhere the business of ——, and of importers, manufacturers of, and dealers in other fabrics or goods of a character similar or analogous to those heretofore imported, manufactured, or dealt in by the said [*vendor*], and any business connected with or conducive to the success of the said business.

To carry on business.

(*c.*) To acquire in the United Kingdom, and elsewhere, any trade-marks, inventions, patents, or patent rights, and other

To acquire trade marks, &c.

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rights and privileges useful for the business of the company, and the granting of licences for the use and exercise of the same respectively by other persons or companies.

To acquire lands.

(*d.*) To acquire for any of the purposes of the company by purchase, or on lease, or otherwise, of any lands, buildings, or other property, and to build, erect, or construct manufactories, workshops, warehouses, and other buildings, machinery, and plant necessary or desirable for the purposes of the company or any of them.

XXIX. *PRELIMINARY AGREEMENT for* SALE *to a* TRUSTEE *for a* COMPANY *about to be formed, of a* PATENT, LEASEHOLD MILLS, &c., MACHINERY, *and* PLANT, *and the* GOODWILL *and* STOCK-IN-TRADE *of a* BUSINESS, *in consideration of Shares and Cash:* VENDOR NOT *to* CARRY ON *similar* BUSINESS.

Parties.

AN AGREEMENT (*a*) made the —— day of ——, 18—, BETWEEN [*vendor*], of, &c. (hereinafter referred to as the vendor), of the one part, and [*trustee*], of, &c. (hereinafter referred to as the trustee), as trustee for and on behalf of a company intended to be formed as hereinafter mentioned, of the other part: WHEREAS the vendor is the owner of the patent hereinafter mentioned, and has for some time past carried on the business of a manufacturer of —— in or upon the leasehold hereditaments hereinafter described; AND WHEREAS a joint-stock company (hereinafter referred to as the company), is intended to be formed under the Companies Acts, 1862 to 1886, for the purpose, among other things, of acquiring the patent, leasehold hereditaments, goodwill, stock-in-trade, and other property hereinafter mentioned, and of carrying on the business of manufacturers of patent ——; AND WHEREAS it is proposed that the nominal capital of the company shall be £100,000 divided into 10,000 shares of £10

Recitals: of title of vendor; of intention of forming a company; of intended capital of company.

(*a*) Stamp, 6*d.*

XXIX. **Preliminary Agreement for Sale of Patent, Mill, and Business.**

Testatum.

Agreement for sale of patent, leasehold mills, &c., and goodwill of business for £50,000.

each: NOW THESE PRESENTS WITNESS, and it is hereby agreed as follows:

1. The vendor shall sell, and the company shall purchase at the price of £50,000: FIRST, ALL that patent under the seal of the Patent Office of the United Kingdom, dated the —— day of ——, for an invention of improvements in [*shortly describe invention*], and certain like patents and privileges which have been obtained for the said invention in the countries of France, Belgium, and the United States of America, and the full benefit of the said patented invention, and of all improvements, and variations of the same, which have been or may hereafter be made, as well in the United Kingdom, and in the countries aforesaid, as in all colonies and dependencies of the United Kingdom, and in all other foreign countries, states, and places: SECONDLY, ALL those leasehold mills known as —— Mills, situate in the parish of ——, in the county of ——, with the use of the water of the stream or streams supplying the ponds belonging thereto, and the —— several cottages adjoining thereto, and all that meadow or close of land containing by admeasurement —— acres or thereabouts, with the appurtenances, which said premises were demised by an indenture of underlease dated, &c., and made between [*parties*] for the term of twenty-one years less one day, from the 29th day of September, 18—, determinable as therein mentioned, at the yearly rent of £——: THIRDLY, ALL the machinery, plant, fixtures, and apparatus, implements, tools, articles, matters, and things upon, or belonging to the said leasehold premises, and used, adapted, or intended for the manufacture now carried on on the same premises, and specified in the Schedule or inventory hereunto annexed: AND FOURTHLY, ALL the goodwill of the vendor in the business of a —— manufacturer in the leasehold premises hereinbefore mentioned, or elsewhere; and all the rights, privileges, trade-marks, drawings, books of account, credits, contracts, engagements, claims, vouchers, papers, articles, matters, and things of, or belonging to, or in anywise subsisting for the benefit of the vendor in any way relating to the said business; and the full benefit and advantage of any invention or inventions, improvement or improvements relating to the said business other than the aforesaid invention, and whether as patentee, licensee, or otherwise howsoever, but save and except all debts and sums of money

XXIX. **Preliminary Agreement for Sale of Patent, Mill, and Business.**

which are now or at the date of the registration of the company, shall be due and owing to the vendor.

Agreement for sale of stock in trade at a valuation.

2. The vendor shall also sell, and the company shall purchase, all the stock of ——, raw and manufactured material, and other stock-in-trade, and also all the furniture in, upon, or about the leasehold premises hereinbefore mentioned, at a price to be estimated on the basis that the whole of the work finished, or in progress, and other saleable materials to be included therein, are to be taken as the labour and materials at the cost price thereof, to the vendor, as on the day of the date of the registration of the company; such price to be ascertained, in case of difference, by two valuers or their umpire, to be appointed in the usual manner.

Sales to take effect from registration of company.

3. The said sales shall take effect from the date of the registration of the company, all outgoings being cleared by the vendor to that date.

Consideration.

4. The consideration for the said sales shall be payable as follows, that is to say: The company will, immediately on its incorporation, issue and allot to the vendor, or to his nominee or nominees, 4,000 shares in the company; such shares to be of the nominal value of £10 each, and to be credited in the books of the company as fully paid up shares; and the issue and allotment of such shares shall be accepted by the vendor as payment of the purchase-money to the extent of £40,000; and the residue of the purchase-money shall, immediately upon the incorporation of the company, be paid in cash to the vendor; and if the said residue, or any part thereof, shall remain unpaid after the incorporation of the company, then the company shall pay to the vendor interest thereon, at the rate of —— per cent. per annum, from the date of registration until actual payment.

As to title.

5. The title to the said leasehold hereditaments shall commence with the said underlease thereof, and the company shall not call for production of, or investigate, or make any requisition, or objection in respect of the title of the lessors, or the right to grant the same underlease; and the production of the receipt for the last payment of rent which shall have accrued due under the said underlease, shall be deemed to be conclusive evidence that all the covenants and conditions in the said underlease have been observed and performed up to the day of the actual completion of the purchase, or that all breaches thereof (if any) have been waived.

6. In case the company shall insist on any objection or requisition as to the title or abstract, or evidence of title or otherwise, which the vendor shall from any cause whatever be unable or unwilling to remove or comply with, the vendor may by notice in writing (notwithstanding any attempt to answer or comply with such objection or requisition, or any previous or pending negotiation or litigation), at any time rescind the sale. In that case the company shall be entitled only to a return of any part of the purchase-moneys or shares which may have been paid or issued on account of the said purchase-moneys, but without any interest, costs, or compensation, or other payment whatsoever.

Requisitions insisted on to entitle vendor to rescind contract.

7. The taking possession and user by the company of the said premises hereby agreed to be sold, or any of them, shall not be deemed to be an acceptance of the vendor's title, or any waiver or abandonment by the company of the right to make requisitions and objections in respect of the title.

Taking possession before completion not to be deemed acceptance of title.

8. Upon such payment and allotment as aforesaid, the vendor shall, at the expense of the company, execute and do such conveyances, assurances, and things as may reasonably be required for effectually vesting in the company the said premises hereby agreed to be sold, and the full benefit of this agreement; and, in particular, the vendor shall enter into a covenant to assign to the company or their nominees the benefit of any future invention of a like kind with the said invention hereinbefore mentioned connected with the process of the manufacture of ——, or any process of a similar description, or with a similar object.

Conveyance.

9. The vendor will forthwith make all necessary arrangements for delivering up to the company, and the company will take possession of and use and enjoy the said premises at and as from the date of the registration of the company; and the company will thenceforth carry out, or cause to be carried out and finished, all contracts and agreements then in course of being executed, and will from that day pay all moneys, wages, rents, rates, taxes, and outgoings thenceforth accruing, or to be incurred in respect thereof, and will indemnify the vendor therefrom.

Company as from registration to take possession of premises, and carry out pending contracts.

10. All debts and sums of money on contracts or otherwise for work done and goods sold and delivered up to and including the day of the registration of the company, shall be and remain the property of the vendor, who shall be entitled to

Vendor entitled to moneys owing up to date of registration of company.

XXIX. **Preliminary Agreement for Sale of Patent, Mill, and Business.**

get in and recover the same as and when he shall think fit; and all debts and liabilities (if any) due or accruing up to the said day of the registration of the company in respect of the said premises hereby agreed to be sold, shall be paid and discharged by the vendor.

Vendor not to carry on similar business.

11. The vendor shall not at any time hereafter, for the term of ten years from the date hereof, either solely or jointly with or as agent for any other person or persons, company or companies, carry on, or be directly or indirectly engaged or concerned or interested in the business of a manufacturer of ——, or in any other business of the same or of a similar kind to the business hereby agreed to be assigned, or any business or businesses connected therewith, except with the consent in writing of the directors of the company for the time being, or permit or suffer his name to be used in carrying on or in connection with any such business.

Vendor to be manager for two years.

12. The vendor will act as and be the manager of the company for a period of two years from the registration thereof, if he shall so long live, determinable nevertheless by the company if the vendor shall not properly discharge his duties as manager, and will as such manager discharge such duties as the directors of the company shall from time to time assign to that office: And the vendor shall receive for his services as manager such salary (to be contingent upon the profits earned by the company) as the directors shall from time to time determine.

Discharge of trustee from liability.

13. Upon the adoption of this agreement by the company the trustee shall cease to be in any way personally liable in respect of these presents, or of anything done or attempted to be done in pursuance hereof.

Avoidance of agreement in certain events.

14. In case before the —— day of ——, 18—, the company shall not have been incorporated, or this agreement shall not have been adopted and confirmed, or at least —— shares in the capital of the company shall not have been taken up, these presents shall be void.

As witness, &c.

The Schedule above referred to.

XXX. *PRELIMINARY AGREEMENT on the formation of a Private Company for* Acquiring *and* Carrying *on the* Business *of a* Trader (*b*).

THIS INDENTURE (*c*), made the —— day of ——, 18—, Between [*vendor*], of, &c., of the first part; [A. B.], of, &c., [C. D.], of, &c., and [E. F.], of, &c., of the second part; and —— and Company, Limited (hereinafter called the company), of the third part: WITNESSETH, and it is hereby agreed and declared as follows, that is to say:—

Agreement for sale of business, machinery, plant, stock-in-trade, &c.

1. The said [*vendor*] shall sell and the company shall purchase, for the considerations hereinafter mentioned, the goodwill of the business of ——, carried on by the said [*vendor*] under the style of —— and Company at, &c., and the stock-in-trade, machinery, plant, utensils, tools, goods, raw and other materials, trade marks, contracts, book and other debts, and credits of the said business.

Agreement for lease, and assignments of business premises.

2. The said [*vendor*] will, at the expense of the company, grant to the company and the company will accept a lease for the term of —— years [*or* from year to year], to commence as on and from the —— day of ——, 18—, of the said premises, No. —, —— Street aforesaid, at the yearly rent of £——, such lease to contain covenants by the company to pay rent and all rates, taxes, and outgoings whatsoever (except landlord's property tax), and to repair and keep insured to the amount of £—— at least the same premises, and all other usual covenants and provisions. And until such

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(*b*) This agreement is specially adapted to the case of the formation of what is called a "Private Company" for the purpose of taking over an established trading business hitherto carried on by an individual or firm. In such cases, it is not intended to call in the public or to issue shares, except to persons already interested in or connected with the business: see *Re British Seamless Paper Box Co.*, 17 Ch. D. 467. The number of shareholders is usually limited to the original proprietor or partners and a few other relatives, friends, or persons employed in the business, and often does not exceed the number of seven members required by the Companies Act, 1862, to subscribe the memorandum and articles of association as a condition precedent to incorporation under the Companies Acts. A private company, when formed, is subject to the same rules and regulations, and possesses the same rights and privileges, as a joint stock company. The principal advantages of the conversion of a business into a private company are that by that means

Private companies.

(*c*) Stamp, 10*s*.

Stamp.

XXX. Preliminary Agreement for Sale of Business of a Trader.

lease shall be granted the company shall occupy the premises upon the terms of the said lease. The said [*vendor*] will, at the expense of the company, use his best endeavour to obtain a licence or licences, if necessary, and subject to obtaining the same will, at the expense of the company, assign or procure to be assigned to the company, and the company will accept assignments of the existing leases and tenancies belonging to the said [*vendor*] of the remainder of the premises aforesaid at which the said business has been carried on.

Vendor's title to be accepted without inquiry.

3. The company shall accept without objection, requisition, or investigation of any kind, the title of the said [*vendor*] to the property hereby agreed to be sold and leased, and to the said leases and tenancies.

Commencement of business by company.

4. The company shall forthwith assume and carry on the said business, and shall be entitled to the profits thereof as from the —— day of ——, 18—.

Company to assume liabilities of business from a specified date

5. The company shall pay and satisfy all rents, rates, taxes, and outgoings (except as aforesaid) in respect of the said premises hereby agreed to be demised and assigned respectively, and all debts and liabilities of the said business which, on the

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the business may be carried on with limited liability, and with increased facilities for raising money by debentures, &c., that the advantages of a corporate existence are secured apart from that of the members, and unaffected by their deaths and other contingencies, and that the members are enabled readily to assign or otherwise deal with their shares, and to also lend money or otherwise deal with the company on the footing of strangers.

Private companies are also sometimes formed for the purpose of establishing and carrying on a new business, such as acquiring and working a patent, purchasing and working a single ship, carrying out a contract for building or other operations, &c.

Mr. Palmer recommends that where the property to be transferred to the company consists mainly of land or other property not capable of passing by manual delivery, the founders should in the first instance form themselves into an unincorporated company, into the joint-stock of which the assets of the business are brought; the number of members, if not already sufficient, will then be increased to seven by allotting a few shares to friends or *employés*, and a resolution will be passed to register the company under Part VII. of the Companies Act, 1862, as a company limited by shares. By this means the duty of 10*s.* per cent., payable on the conveyance of the property of the concern to the company, will be avoided: see *Ryhope Colliery Co.* v. *Foyer*, 7 Q. B. D. 485. See also Palmer's Company Precedents, pp. 334 *et seq.*, where further information may be obtained as to the formation and nature of private companies.

said —— day of ——, 18—, shall appear in the books of the said business to be then unpaid (whether or not the same shall then have actually accrued due or payable, and whether or not the same ought, in the ordinary course of business or otherwise, to have been paid before that day), and also all rents, rates, taxes, and outgoings (except as aforesaid) of the premises hereby agreed to be leased and assigned respectively during the continuance of the several leases and tenancies hereby agreed to be granted and assigned respectively, and all debts and liabilities of the said business which have accrued or shall hereafter accrue, and shall accept and adopt all credits which may have been given, and all contracts which may have been entered into by the said [*vendor*], and shall indemnify the said [*vendor*] against all losses, claims, and demands in respect thereof respectively.

and indemnify vendor therefrom.

6. The company, in consideration of the premises, will forthwith allot the following shares to the persons hereinafter named, that is to say:—1993 A shares of the company numbered 1 to 1993 both inclusive, and also 2975 B shares of the company numbered 1 to 2975, both inclusive, to the said [*vendor*]; 10 B shares of the company numbered 2976 to 2985, both inclusive, to the said [A. B.]; 10 B shares of the company numbered 2986 to 2995, both inclusive, to the said [C. D.]; and 5 B shares of the company numbered 2996 to 3000, both inclusive, to the said [E. F.]. All of the said shares shall be issued as paid-up shares, and as having the full amount thereof, that is to say, £20 per share paid up and credited as paid up thereon. The shares hereby agreed to be allotted to the said [A. B.], [C. D.], and [E. F.], are so agreed to be allotted at the request and on the nomination of the said [*vendor*], and form part of the consideration for the purchase hereby agreed to be made.

Consideration (*d*).

7. The said [*vendor*] shall be the sole director of the company during his life, or until he shall resign the office, and shall, while he shall continue director, be entitled, by way of

Vendor to be sole director of company.

(*d*) By the memorandum and articles of association in this case, the shares were to rank equally as to dividends, but were divided into two classes, viz. 2,000 "A" shares, including the seven shares taken by the subscribers to the memorandum of association; and 3,000 "B" shares, which were not transferable, except with the consent of the vendor, for three years after the incorporation of the company.

XXX Preliminary Agreement for Sale of Business of a Trader.

remuneration, to the yearly sum of £——, and also be at liberty to reside in and occupy, free of rent or charge, the premises of the company at No. —, —— Street aforesaid, and other premises for the time being of the company. And the rents, rates, taxes, and outgoings of the premises so occupied, and all attendance, gas, coal, candles, water, and other conveniences of and attending such residence and occupation, shall be paid and supplied by and at the expense of the company.

Incorporation of articles of association.

8. The articles of association of the company are hereby incorporated herewith, and shall be deemed to be agreements hereby made between the said [*vendor*] and the company.

In witness, &c.

XXXI. *AGREEMENT BY LIQUIDATORS on the* Reconstruction *of a* Company *under Sect.* 161 *of the Companies Act,* 1862 (*e*).

Parties.

AN AGREEMENT (*f*), made the —— day of ——, 18—, Between the —— Mining Company, Limited (hereinafter referred to as the Vendor Company), of the first part; [A. B.], of, &c., and [C. D.], of, &c., the liquidators of the Vendor Company (hereinafter referred to as the liquidators), of the second part; and the New —— Mining Company (hereinafter referred to as the New Company), of the third part: Whereas

Recitals: of formation of company;

the Vendor Company was in the month of ——, 18—, incorporated under the Companies Acts, 1862 to 1883, as a company limited by shares, with a nominal capital of £100,000, divided into 10,000 shares of £10 each: And whereas in pursuance of special resolutions passed on the —— day of ——, 18—, and confirmed on the —— day of ——, 18—, the capital of the Vendor Company was increased

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(*e*) As to reconstruction of companies, see *ante*, p. 354.

Stamp.

(*f*) Stamp 10*s*.

XXXI. Agreement on Reconstruction of a Company.

from £100,000 to £150,000, and such increase was effected by the issue of 5,000 preference shares of £10 each: AND WHEREAS, by special resolution passed on the —— day of ——, 18—, and confirmed on the —— day of ——, 18—, it was resolved that the Vendor Company should be wound up voluntarily, and that the said [A. B.] and [C. D.] should be appointed liquidators of the Vendor Company: AND WHEREAS the Vendor Company and the liquidators, as liquidators thereof, are entitled to or interested in certain mines situate in the State of ——, known as the —— Mines, and also are entitled to or interested in certain smelting works, machinery, and premises situate at ——, in the State of ——, as aforesaid, and certain other property and effects: AND WHEREAS the Vendor Company is indebted to divers persons in sums amounting in the aggregate to £——, or thereabouts. NOW THESE PRESENTS WITNESS, and, it is hereby agreed and declared as follows, that is to say:—

of special resolutions for winding up, and appointment of liquidators;

of title of vendor company to mines and other property;

of liabilities of vendor company.

Testatum.

1. The Vendor Company and the liquidators shall sell, and the New Company shall purchase, all the estate and interest of the Vendor Company, and of the liquidators, as liquidators thereof, in the said mines and smelting works, and all other the property, assets, and effects whatsoever of the Vendor Company, and of the liquidators, as liquidators thereof, for the consideration or price hereinafter mentioned.

Agreement for sale of mines and property.

2. The New Company shall, as part of such consideration or price, pay to the liquidators, such sum as shall be sufficient to pay and discharge all the debts of the Vendor Company, and the costs, charges, and expenses of, and incident to the winding up and liquidation of the affairs of the Vendor Company, including the costs of the preparation and execution of these presents, and of and incident to the carrying the same into effect.

New company to discharge liabilities of vendor company and cost of winding up.

3. The New Company shall, as the remaining part of such consideration or price, by the direction of the liquidators, allot to each of the members of the Vendor Company, who shall be willing to accept the same, or his nominee or nominees, a number of shares in the New Company equal to the number of his shares in the Vendor Company, whether ordinary or preference, so that each such member, or his nominee or nominees shall be entitled to one share in respect of every ordinary or preference share which he shall hold in the Vendor Company. Each of the shares in the New Com-

New company to allot shares therein to members of vendor company.

XXXI. Agreement on Reconstruction of a Company.

pany so to be allotted shall be credited in the books of the New Company with the sum of £8 per share, as paid up thereon at the date of allotment, and the member accepting the said shares, or his nominee or nominees, shall be liable to pay in respect of such shares the sum of £2 per share, and no more, such sum of £2 per share to be payable at such time or times, and in such manner as shall be required by the New Company: Provided always, that, except in this respect, all the shares so to be allotted, shall rank equally and *pari passu*, with all or any other shares forming part of the original nominal capital of the New Company.

Dissentient members.

4. Every member of the Vendor Company who shall not within seven days after notice to him by the New Company of their willingness to allot the shares in the New Company to which he is entitled as aforesaid, accept such shares for himself, or his nominee or nominees, shall be deemed to have refused the same shares.

Interests of dissentient members to be purchased by moneys raised by sale of refused shares.

5. In the event of any member of the Vendor Company refusing the shares in the New Company, to which he shall be entitled as aforesaid, and of his being entitled to have his interest purchased under the 161st Section of the Companies Act, 1862, the price, if any, to be paid for such interest in accordance with the 162nd Section of the same Act, shall, if the liquidators shall so require, be raised by the sale of the shares to which such member would have been entitled if he had accepted the same, or, if the same cannot be so raised, shall be paid by the liquidators and the New Company, but the New Company shall, as between themselves and the liquidators, be primarily liable for such price, and shall indemnify and keep indemnified the liquidators from all liability in respect of such price, and from all costs, charges, damages, and expenses which may arise by reason or in consequence of the non-payment of the same.

Allotment of shares refused and unsold.

6. Subject as aforesaid such of the said shares in the New Company as shall not be accepted by members of the Vendor Company within the time limited for that purpose, shall be alloted, sold, or otherwise disposed of, as the New Company shall think fit, and may be alloted as wholly unpaid shares.

New company to take possession on incorporation.

7. The New Company shall be entitled to the property hereby agreed to be sold as from the date of its incorporation, and shall from and after such date pay and discharge the

XXXI. **Agreement on Reconstruction of a Company.**

rents, rates, outgoings, and liabilities affecting the same, whether the same have or shall have accrued previously to or after the date of its incorporation, but so that such liability shall not include any debts which the sum so as aforesaid agreed to be paid to the liquidators, shall or ought to discharge.

Agreement to be conditional on obtaining sanction of vendor company.

8. This agreement is conditional upon the sanction of the Vendor Company being obtained thereto in accordance with the 161st Section of the Companies Act, 1862, and shall be void if such sanction be not obtained before the —— day of ——, 18—.

In witness, &c.

PATENT AND COPYRIGHT.

PRELIMINARY DISSERTATION.

CHAPTER I.

PATENTS FOR INVENTIONS.

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1. The Practice as to Grants of Patents for Inventions.

Case of Monopolies.

In the celebrated *Case of Monopolies* (44 Eliz., *Darcey* v. *Allein*, 11 Rep. 84, b.; Moore, 671; Noy, 173), it was decided that a grant by the Crown of the sole privilege of making cards within the realm was void, and it was said that all monopoly patents were void both by common law and by statute, unless they were granted to the introducer of a new trade or engine, and then for a reasonable time until the subjects may learn the invention. The law was

soon afterwards more explicitly declared by the statute "concerning monopolies and dispensations with penal laws, and the forfeitures thereof," which enacts,— **The Practice as to Grants of Patents.** Stat. 21 Jac. 1, c. 3.

Sect. 1. "That all monopolies, and all commissions, grants, licenses, charters, and letters patent heretofore made or granted, or hereafter to be made or granted." . . . . "are altogether contrary to the laws of this realm, and so on and shall be utterly void and of none effect, and in no wise be put in use or execution." All monopolies, dispensations, &c., are void.

Sect. 6. "That any declaration before mentioned shall not extend to any letters patent and grants of privileges for the term of fourteen years or under, hereafter to be made of the sole working or making of any manner of new manufactures within this realm, to the true and first inventor and inventors of such manufactures, which others at the time of making such letters patent and grants shall not use; so as also they be not contrary to the law nor mischievous to the state by raising prices of commodities at home or hurting of trade, or generally inconvenient; the said fourteen years to be accounted from the date of the first letters patent or grants of such privilege hereafter to be made, but that the same shall be of such force as they should be if this Act had never been made, and of none other." Saving of letters patent for new inventions.

"It is to be observed that the statute gives no right to the inventor. The statute is a statute for the abolishing and forbidding monopolies, and the sixth section under which the Crown acts in such matters, is a mere proviso excepting from the operation of that Act certain patents or grants of privileges which are to be 'of such force as they should be if this Act had never been made, and of none other.' And it is from the ancient power and prerogative of the Crown, so saved and preserved, that every patentee derives his monopoly:" per *James*, L. J., in *Von Heyden* v. *Neustadt*, 14 Ch. D., at p. 232.

The statute law with regard to patents, copyright in designs, and trade marks is now mainly regulated by the Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), whereby the statutory enactments mentioned in the note below (*a*) are re- Stat. 46 & 47 Vict. c. 57.

(*a*) 21 Jac. 1, c. 3, ss. 10, 11, 12; 5 & 6 Will. 4, c. 62, s. 11; 5 & 6 Will. 4, c. 83; 2 & 3 Vict. c. 67; 5 & 6 Vict. c. 100; 6 & 7 Repeals.

The Practice as to Grants of Patents.

pealed, and their provisions are consolidated and amended, and by the Patent Rules, 1883, issued under the present Act. Sect. 46 of the Act of 1883 contains the following definitions of the terms patent, patentee, and invention :—

Definitions of patent, patentee, and invention.

"In and for the purpose of this Act—

"'Patent' means letters patent for an invention :

"'Patentee' means the person for the time being entitled to the benefit of a patent :

"'Invention' means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies (that is, the Act of the twenty-first year of the reign of King James the First, chapter three, intituled 'An Act concerning monopolies and dispensations with penal laws and the forfeiture thereof'), and includes an alleged invention."

Application for and grant of patent.

Who may apply for a Patent.]—The Act which commenced from the 31st of December, 1883 (sect. 3), enacts, with regard to applications for patents, as follows :—

Persons entitled to apply for patent.

Sect. 4. "(1.) Any person, whether a British subject or not, may make an application for a patent.

"(2.) Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly."

Infant or lunatic patentee.

The infancy of a grantee of a patent under the old law did not affect its validity : *Cheavin* v. *Walker*, 5 Ch. D., at p. 858. And by sect. 99 of the present Act it is enacted that,—

"If any person is, by reason of infancy, lunacy, or other inability, incapable of making any declaration or doing anything required or permitted by this Act or by any rules made under the authority of this Act, then the guardian or committee (if any) of such in-

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Vict. c. 65 ; 7 & 8 Vict. c. 69 (repealed in part by the Stat. Law Revision Act, 1874) ; 13 & 14 Vict. c. 104 ; 15 & 16 Vict. c. 83 ; 16 & 17 Vict. c. 5 ; 16 & 17 Vict. c. 115 ; 21 & 22 Vict. c. 70 ; 22 Vict. c. 13 ; 24 & 25 Vict. c. 73 ; 28 & 29 Vict. c. 3 ; 33 & 34 Vict. c. 27 ; 33 & 34 Vict. c. 97 (Stamp Act, 1870), sect. 65, and part of Schedule ; 38 & 39 Vict. c. 91 ; 38 & 39 Vict. c. 93 ; 39 & 40 Vict. c. 33 ; 40 & 41 Vict. c. 37 ; 43 & 44 Vict. c. 10, s. 5 ; and 45 & 46 Vict. c. 72, s. 72. See sect. 112 and Schedule 3 of the Act of 1883.

The Practice as to Grants of Patents.

capable person, or if there be none, any person appointed by any court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted."

Executors, &c., of deceased inventor.

Formerly the personal representatives of an inventor, who had not taken out letters patent, were not entitled to apply for a grant: *Marsden* v. *Savile Street Foundry, &c., Co.*, 3 Ex. D. 203. But now by sect. 34 of the Act of 1883, it is enacted that,—

Patent on application of representative of deceased inventor.

"(1.) If a person possessed of an invention dies without making application for a patent for the invention, application may be made by, and a patent for the invention granted to, his legal representative."

"(2.) Every such application must be made within six months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to be the true and first inventor of the invention."

And by sect. 12, sub-sect. 3 (*b*), it is enacted that,—

"If the person making the application dies before the expiration of the fifteen months aforesaid, the patent may be granted to his legal representative and sealed at any time within twelve months after the death of the applicant."

Applicant resident abroad.

It was held in *Re Wirth's Patent*, 12 Ch. D. 303, that under the old law a patent might be granted to an alien resident abroad for an invention communicated to him by another alien also resident abroad. But by rule 27 an application for a patent for an invention communicated from abroad must now be made in the form A. 1 set forth in the schedule to the rules; and notice has recently been given that all applicants using this form must be residents in the United Kingdom. The practice of granting

The Practice as to Grants of Patents.

patents to British subjects resident in the United Kingdom for inventions communicated from abroad, which has long been established, has not been changed by the present Act; and where the inventor is resident abroad and desires to obtain the benefit of a patent in this country, the safest and most convenient course is to get a person resident in this realm to take out the patent in his own name, stating in the application that the invention is communicated from abroad, and for the patent when granted to be assigned to the inventor, or his nominee: see Johnson's "Patentees' Manual," at p. 96: see also *Milligan* v. *Marsle*, 2 Jur. (N. S.) 1083; *Marsden* v. *Savile Street Co.*, 3 Ex. D. 203; the importer may be merely the agent of the foreign inventor: *Beard* v. *Egerton*, 3 C. B. 97.

Knowledge obtained by official position.

Where knowledge of a process was obtained by a gas referee by virtue of his official position, and communicated to his colleagues for the purposes of a report, it was held that the knowledge thus communicated became at once public property, and that the referees could not agree to treat it as confidential so as to enable one of their number to take out a patent for the process: *Patterson* v. *Gas Light and Coke Co.*, 3 App. Ca. 239.

Joint patentees.

The 2nd sub-sect. of sect. 4 extends to applicants for patents generally, the rule hitherto in force with regard to inventors: see *Mathers* v. *Green*, L. R. 1 Ch. A. 29.

Form of application.

Form of Application: true Inventor.]—With regard to the form of application for a patent the Act enacts as follows:—

Application and specification.

Sect. 5. "(1.) An application for a patent must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed; and must be left at, or sent by post to, the patent office in the prescribed manner.

"(2.) An application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application, one or more of the applicants, claims or claim to be the true and first inventor or inventors, and for which he or they desires or desire to obtain a patent; and

must be accompanied by either a provisional or complete specification (*b*)."

The Practice as to Grants of Patents.

The true inventor.

In the case of a patent for a bleaching liquor, it was proved that a bleacher had used the process secretly for five or six years before the patent was granted, and that a chemist had suggested to the patentee the agitation of the lime water, which was indispensable in the process. The plaintiff was non-suited on *both* grounds : *Tennant's Case,* Dav. P. C. 429. And in *Bloxam* v. *Elsee,* 1 Car. & P. 558, it was objected to the patent for improvements in the paper machine, that the improvements were the invention of Mr. Donkin, an engineer, in the employ of the patentee ; but the distinction appears to have been made, that if the servant is employed for the purpose of carrying out an idea the master's patent for his inventions may be good : see *Minter* v. *Wells,* Web. P. C. 132 ; *Jupe* v. *Pratt, ibid,* 144 ; *Allen* v. *Rawson,* 1 C. B. 574. In *Makepeace* v. *Jackson,* 4 Taunt. 770, it was held that a calico-printer, who had discharged his head colourman, was entitled to the book in which that servant had entered the processes for mixing the colours during his service, though many were of his own invention. Generally, a master is not entitled to a patent for his servant's invention : *Barker* v. *Shaw,* Gods. Pat. 158 ; Web. P. C. 126, 132 ; *Barber* v. *Walduck,* 1 Car. & P. 567. But the proper course, under the present law, in such a case as that in *Bloxham* v. *Elsee* would be to procure the concurrence of the inventor in the application, and to state in the application for the patent that the inventor, being one of the joint applicants, claims to be the true and first inventor. Where two persons take a patent jointly, and one of them is the sole inventor, it is advisable that an agreement in writing should be entered into by the applicants, before the patent is granted, defining the terms on which the patent is to be worked ; otherwise disputes may not improbably arise as to their respective rights.

Master's right to his servant's invention.

(*b*) As to specifications, see *post,* p. 625 *et seq.*

The Practice as to Grants of Patents.

As to novelty of the subject-matter as a condition to the validity of a patent, see *post*, pp. 619 *et seq.*

By sect. 35 of the Act of 1883, it is enacted that—

Patent to first inventor not invalidated by application in fraud of him.

"A patent granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection."

And by sect. 14 of the same Act, "provisional protection" is thus defined :—

Provisional protection.

"When an application for a patent in respect of an invention has been accepted, the invention may during the period between the date of the application and the date of sealing such patent be used and published without prejudice to the patent to be granted for the same; and such protection from the consequences of use and publication is in this Act referred to as provisional protection."

Summary of proceedings on application for patent.

Proceedings on Application for a Patent.]—It may be useful, before proceeding further, to give a summary of the proceedings to be taken under the Act and Rules of 1883 for obtaining the grant of a patent, as was done in this place in the last edition of this work, with regard to applications under the old law : see Byth. & Jar. Conv., 3rd ed., Vol. VII., pp. 473 *et seq.*

Delivery of application, with provisional or complete specification.

The first step, then, towards obtaining a patent is to leave at or send by pre-paid letter through the post (r. 19) to the Patent Office and prescribed form : sect. 5, *ante*, p. 602 (*c*). The declaration required to

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(*c*) The following is the form of application for a patent prescribed in the First Schedule to the Act of 1883, Form A. The words in brackets are applicable to an invention communicated from abroad, and are prescribed by the Second Schedule to the Rules of 1883, for use in such cases, see r. 27 :—

Section 5.

£1 Stamp.

FORM OF APPLICATION FOR PATENT.

I, (*a*) *John Smith*, of 29, *Perry Street*, *Birmingham*, in the county of *Warwick*, *Engineer*, do solemnly and sincerely declare that I am in possession of an invention for (*b*) "*Improvements in Sewing Machines;*" [which invention has been communicated to me from abroad by —— (*c*)], that I am [*or* claim to be] the true and first inventor thereof; and that the same is not in

(*a*) Here insert name, address and calling of inventor [or applicant].

(*b*) Here insert title of invention.

(*c*) Here insert name, address and calling of communicant.

The Practice as to Grants of Patents.

be contained in the application is to be made by virtue of the Statutory Declarations Act, 1835 (5 & 6 Will. 4, c. 62), and consequently must be made before a justice of the peace or other person authorised to administer oaths; the application must be signed by the applicant himself, and must be accompanied by a statement of an address for service of notices, &c.: rr. 8, 9. The application must also be accompanied by either a provisional or a complete specification: sect. 5. The specification in either case will commence with the title of the invention (*d*).

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use [within this realm] by any other person or persons to the best of my knowledge and belief; and I humbly pray that a patent may be granted to me for the said invention.

And I make the above solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

(*d*) *John Smith.*

Declared at *Birmingham*, in the county of *Warwick*, this —— day of ——, 18—.

Before me,
(*e*) *James Adams,*
Justice of the Peace.

(*d*) Signature of inventor.
(*e*) Signature and title of the officer before whom the declaration is made.

NOTE.—Where the above declaration is made out of the United Kingdom, the words "and by virtue of the Statutory Declarations Act, 1835," must be omitted; and the declaration must be made before a British consular officer, or where it is not reasonably practicable to make it before such officer, then before a public officer duly authorised in that behalf.

(*d*) As to the title, specifications, and drawings, see *post*, p. 625 *et seq.* The following are the forms of provisional and complete specifications respectively prescribed by the Second schedule to the Act of 1883, Forms B. and C.:—

FORM OF PROVISIONAL SPECIFICATION.

Improvements in Sewing Machines (*a*).

I, (*b*) *John Smith*, of 29, *Perry Street, Birmingham*, in the county of *Warwick*, *Engineer*, do hereby declare, the nature of my invention for "*Improvements in Sewing Machines*," to be as follows (*c*):—

* * * * *

(*d*) *John Smith.*

Dated this —— day of ——, 18—.

NOTE.—No stamp is required on this document.

(*a*) Here insert title as in declaration.
(*b*) Here insert name, address, and calling of inventor as in declaration.
(*c*) Here insert short description of invention.
(*d*) Signature of inventor.

£3 Stamp.

FORM OF COMPLETE SPECIFICATION.

Improvements in Sewing Machines (*a*).

I, (*b*) *John Smith*, of 29, *Perry Street, Birmingham*, in the county of *Warwick*, *Engineer*, do hereby declare the nature of my invention for "*Improvements in Sewing Machines*," and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement (*c*):—

* * * * *

Having now particularly described and ascertained the nature of my said

(*a*) Here insert title, as in declaration.
(*b*) Here insert name, address, and calling of inventor, as in declaration.
(*c*) Here insert full description of invention.

The Practice as to Grants of Patents.

Reference, report, amendment, and acceptance.

The application and specification, whether provisional or complete, and drawings (if any) will be referred to an examiner to ascertain and report as to the form and contents of the application, specification, and drawings, and the sufficiency of the title: sect. 6. If the examiner reports adversely on any of these points, the comptroller (subject to appeal to the law officer) (*e*) may require amendment before proceeding with the application. If the application is accepted, whether with a provisional or complete specification, the acceptance is to be notified to the applicant and advertised in the official journal of the Patent Office: sect. 7; r. 25. If before the patent is sealed an application is made, accompanied by a specification bearing a similar title, and the examiner reports that it comprises the same invention, the comptroller is to give notice of such report to both the applicants, who may attend before him, but will not be allowed to see the rival specification until its acceptance has been advertised; and the comptroller may require a statement in writing or the personal attendance of an applicant; the comptroller may determine (subject to appeal to the law officer) whether or not the inventions are the same, and, if so, he may refuse the application of the second applicant: sect. 7; rr. 13, 16.

Delivery of complete specification.

An applicant who has left only a provisional specification, may send in his complete specification within nine months from the application. If he fails to do so, his application will be deemed to have been abandoned: sect. 8. Month means calendar month: stat. 13 & 14 Vict. c. 21, sect. 4. The period is exclusive of the date of application: *Watson* v. *Pears*, 2 Camp. 294; see *Russell* v. *Ledsam*, 14 M. & W. 582; *Williams* v. *Nash*, 28 Beav. 93; but inclusive of the

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invention and in what manner the same is to be performed, I declare that what I claim is (*d*).

(*d*) Here state distinctly the features of novelty claimed.

1.
2.
3. &c.

(*e*) Signature of inventor.

(*e*) *John Smith.*

Dated this —— day of ——, 18—.

(*e*) The "law officer" means the Attorney or Solicitor-General: sect. 117.

The Practice as to Grants of Patents.

date of delivery: *Castle* v. *Burditt*, 3 T. R. 623; *Glassington* v. *Rawlings*, 3 East, 407. If the last day falls on a Saturday, Sunday, or public holiday, the specification may be sent in on the day following: sect. 98.

Reference, &c., of complete specification.

Where a complete specification is left after a provisional specification, both will be referred to an examiner for comparison and report. If the report is adverse as to the proper preparation of the complete specification, or as to its substantial identity with the provisional specification, the comptroller may refuse to accept the complete specification unless amended, subject to appeal to the law officer. An application unless accepted within twelve months from the date thereof (except in case of appeal lodged) becomes void: sect. 9. After the acceptance of an application with a complete specification has been duly notified and advertised, the application, specification, and drawings (if any), are to be open to public inspection on payment of the prescribed fee: sect. 10; rr. 25, 26.

Proceedings in opposition.

With regard to opposition to the grant of a patent, sect. 11 of the Act enacts as follows:—

Opposition to grant of patent.

"(1) Any person may at any time within two months from the date of the advertisement of the acceptance of a complete specification give notice at the patent office of opposition to the grant of the patent on the ground of the applicant having obtained the invention from him, or from a person of whom he is the legal representative, or on the ground that the invention has been patented in this country on an application of prior date, or on the ground of an examiner having reported to the comptroller that the specification appears to him to comprise the same invention as is comprised in a specification bearing the same or a similar title and accompanying a previous application, but on no other ground."

"(2.) Where such notice is given the comptroller shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after hearing the applicant and the person so giving notice, if desirous of being heard, decide on the case, but subject to appeal to the law officer."

"(3.) The law officer shall, if required, hear the applicant and any person so giving notice and being, in the opinion of the law officer, entitled to be heard in opposition to the grant, and shall determine whether the grant ought or ought not to be made."

The Practice as to Grants of Patents.

"(4.) The law officer may, if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the law officer, with the consent of the Treasury, shall appoint.

Although the requirement of the Act, 1882, that the opposing party should have an interest in the patent is not here repeated, it is necessarily implied as regards opposition on the first ground, and would seem to be implied generally by the limitation of the right to oppose to persons "being in the opinion of the law officer entitled to be heard in opposition to the grant."

Prior user was formerly a ground of opposition to a grant: *Re Samuda*, cit. Hindmarsh on Patents, 534; *Re Adamson's Patent*, 6 De G. M. & G. 420; *Re Tolhausen's Patent*, 14 W. R. 551; so also were want of utility: *Re Cutler's Patent*, 1 Web. P. C. 426; and that the invention was not a proper subject for a grant: *Re Spence's Patent*, 3 De G. M. & G. 523. But these objections are no longer grounds of opposition.

A patent can only now be opposed on one or more of the three grounds stated in sect. 11 (*supra*). For an elaborate and able examination of these grounds of opposition see Johnson's Patentees' Manual, chap. viii., pp. 169 *et seq.* And the following reports of cases may be referred to:—

On the first ground: *Re Daines' Patent*, 26 L. J. (N. S.) 298; *Re Russell's Patent*, 2 De G. & J. 130; *Re Spence's Patent*, 3 De G. & J. 523; *Re Folson's Patent*, 6 De G., M. & G. 422; *Re Simpson and Isaacs' Patent*, 21 L. T. 81; *Ex parte Henry*, L. R. 8 Ch. A. 167.

On the second ground: *Ex parte Fox*, 1 Web. P. C. 431; *Re Vincent's Patent*, L. R. 2 Ch. A. 341; *Ex parte Bates and Redgate*, L. R. 3 Ch. A. 577; *Ex parte Manceaux*, L. R. 6 Ch. A. 273; *Ex parte Steel and Young*, ibid. 274; *Ex parte Bailey*, L. R. 8 Ch. A. 61.

On the third ground: *Re Lowe's Patent*, 25 L. J. (N. S.) 454; *Ex parte Dyer*, cit. Hindmarsh on Patents, 535; *Re Simpson and Isaac's Patent*, 21 L. T. 81; *Re Dering's Patent*, 13 Ch. D. 393.

The Practice as to Grants of Patents.

With regard to the sealing of patents the Act of 1883 enacts as follows :—

Sealing of patent.

Sect. 12. "(1.) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, the comptroller shall cause a patent to be sealed with the seal of the patent office.

"(2.) A patent so sealed shall have the same effect as if it were sealed with the great seal of the United Kingdom.

"(3.) A patent shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of application, except in the cases hereinafter mentioned, that is to say—

"(*a.*) Where the sealing is delayed by an appeal to the law officer, or by opposition to the grant of the patent, the patent may be sealed at such time as the law officer may direct.

"(*b.*) If the person making the application dies before the expiration of the fifteen months aforesaid, the patent may be granted to his legal representative and sealed at any time within twelve months after the death of the applicant."

Date of patent.

Sect. 13. "Every patent shall be dated and sealed as of the day of the application : Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification : Provided also, that in case of more than one application for a patent for the same invention, the sealing of a patent on one of those applications shall not prevent the sealing of a patent on an earlier application."

Extent of patent

Sect. 16. "Every patent when sealed shall have effect throughout the United Kingdom and the Isle of Man."

Term of patent.

Sect. 17. "(1.) The term limited in every patent for the duration thereof shall be fourteen years from its date."

"(2.) But every patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to make the prescribed payments within the prescribed times."

Fees (*f*)

In cases where non-payment is owing to accident,

(*f*) The following table of fees is given in the Second Schedule to the Act :—

FEES ON INSTRUMENTS FOR OBTAINING PATENTS, AND RENEWAL.

(*a.*) *Up to sealing.*

	£	*s.*	*d.*	£	*s.*	*d.*
On application for provisional protection	1	0	0			
On filing complete specification	3	0	0			
				4	0	0
or						
On filing complete specification with first application				4	0	0

The Practice as to Grants of Patents.

mistake, or inadvertence the comptroller may grant an enlargement of time for payment not exceeding three months : sub-sects. 3 and 4.

Form and contents of patent.

A patent consists of six parts, viz., the address, the recitals, the grant, the prohibition, the conditions, and the construction of the grant (*g*).

(*b.*) *Further before end of four years from date of patent.*

On certificate of renewal	50	0	0

(*c.*) *Further before end of seven years, or in the case of patents granted after the commencement of this Act, before the end of eight years from date of patent.*

On certificate of renewal	100	0	0

Or in lieu of the fees of £50 *and* £100 *the following annual fees :—*

Before the expiration of the	fourth	year	from the	date	of the patent	10	0	0
,,	,,	fifth	,,	,,		10	0	0
,,	,,	sixth	,,	,,		10	0	0
,,	,,	seventh	,,	,,		10	0	0
,,	,,	eighth	,,	,,		15	0	0
,,	,,	ninth	,,	,,		15	0	0
,,	,,	tenth	,,	,,		20	0	0
,,	,,	eleventh	,,	,,		20	0	0
,,	,,	twelfth	,,	,,		20	0	0
,,	,,	thirteenth	,,	,,		20	0	0

(*g*) The following is the form of patent prescribed by sect. 33 of the Act of 1883, as given in the First Schedule to the Act, Form D.

FORM OF PATENT.

Address.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith : To all to whom these presents shall come greeting :

Recitals.

Whereas *John Smith, of* 29, *Perry Street, Birmingham*, in the county of *Warwick, Engineer*, hath by his solemn declaration represented unto us that he is in possession of an invention for "*Improvements in Sewing Machines*," that he is the true and first inventor thereof, and that the same is not in use by any other person to the best of his knowledge and belief :

And whereas the said inventor hath humbly prayed that we would be graciously pleased to grant unto him (herein-after together with his executors, administrators, and assigns, or any of them, referred to as the said patentee) our Royal Letters Patent for the sole use and advantage of his said invention :

And whereas the said inventor hath by and in his complete specification particularly described the nature of his invention :

And whereas we being willing to encourage all inventions which may be for the public good, are graciously pleased to condescend to his request :

Grant.

Know ye, therefore, that We, of our especial grace, certain knowledge, and mere motion do by these presents, for us, our heirs and successors, give and grant unto the said patentee our especial license, full power, sole privilege, and authority, that the said patentee by himself, his agents, or licensees, and no others, may at all times hereafter during the term of years herein mentioned, make, use, exercise, and vend the said invention within our United Kingdom of Great Britain and Ireland, and Isle of Man, in such manner as to him or them may seem meet, and that the said patentee shall have and enjoy the whole profit and advantage from time to time accruing by reason of the said invention, during the term of fourteen years from the date hereunder written of these presents : And to the end that the said patentee may have

The Practice as to Grants of Patents.

The *address* is from Her Majesty to the public in the words, "To all to whom these presents shall come," &c. The patent then *recites* the name and address of the patentee, and that he has made the required declaration that he is in possession of an invention, that he is the true and first inventor, and that the same is not in use by any other person to the best of his knowledge and belief. The second recital states the prayer of the applicant for the grant. The third recital states that the inventor has by his complete specification particularly de-

Address.

Recitals.

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and enjoy the sole use and exercise and the full benefit of the said invention, We do by these presents for us our heirs and successors, strictly command all our subjects whatsoever within our United Kingdom of Great Britain and Ireland, and the Isle of Man, that they do not at any time during the continuance of the said term of fourteen years either directly or indirectly make use of or put in practice the said invention, or any part of the same, nor in anywise imitate the same, nor make or cause to be made any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent, licence, or agreement of the said patentee in writing under his hand and seal, on pain of incurring such penalties as may be justly inflicted on such offenders for their contempt of this our Royal command, and of being answerable to the patentee according to law for his damages thereby occasioned : Provided that these our letters patent are on this condition, that, if at any time during the said term it be made to appear to us, our heirs, or successors, or any six or more of our Privy Council, that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof within our United Kingdom of Great Britain and Ireland, and Isle of Man, or that the said patentee is not the first and true inventor thereof within this realm as aforesaid, these our letters patent shall forthwith determine, and be void to all intents and purposes, notwithstanding anything hereinbefore contained : Provided also that if the said patentee shall not pay all fees by law required to be paid in respect of the grant of these letters patent, or in respect of any matter relating thereto at the time or times, and in manner for the time being by law provided ; and also if the said patentee shall not supply or cause to be supplied, for our service all such articles of the said invention as may be required by the officers or commissioners administering any department of our service in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled in manner for the time being by law provided, then, and in any of the said cases, these our letters patent, and all privileges and advantages whatever hereby granted shall determine and become void notwithstanding anything hereinbefore contained : Provided also that nothing herein contained shall prevent the granting of licences in such manner and for such considerations as they may by law be granted : And lastly, we do by these presents for us, our heirs, and successors, grant unto the said patentee that these our letters patent shall be construed in the most beneficial sense for the advantage of the said patentee. In witness whereof we have caused these our letters to be made patent this one thousand eight hundred and and to be sealed as of the one thousand eight hundred and .

Prohibition.

Conditions.

Construction.

Seal of Patent Office.

The Practice as to Grants of Patents.

scribed the nature of his invention. And the fourth and last recital states that the Crown, being willing to encourage all inventions which may be for the public good, has condescended to the request.

Grant.

It then witnesses that the Crown, of its special grace, certain knowledge, and mere motion, gives and grants to the patentee especial license, &c., by himself, his agents, licensees, and no others, to make, use, exercise, and vend his invention for

Prohibition.

the term of fourteen years. The patent then goes on to *prohibit* other persons from using the invention without the patentee's license under his hand

Conditions.

and seal. It then provides that the patent is on *condition* that if it shall appear to the Crown, or any six of the Privy Council, that the grant is contrary to law, or prejudicial or inconvenient to the subjects generally, or that the said invention is not a new invention as to the public use and exercise thereof within the United Kingdom and the Isle of Man, or that the patentee is not the true and first inventor thereof, the patent shall be void. Next follow provisions that the patent shall be void, if the patentee do not pay the prescribed fees, and for the supply of articles for the service of the Crown on reasonable terms, when required.

Construction.

The patent concludes by declaring that the patent is to be *construed* in the sense most beneficial for the patentee.

2. The Validity of a Patent with reference to its Subject-matter.

Addition to known process.

Addition and Improvement.]—The Act of 1883 adopts the requirements of the Statute of Monopolies (see *ante*, p. 599) with regard to what is a proper subject for the grant of a patent, viz., that the grant shall be made only of "new manufactures" to the "true and first inventor" thereof, and so that they be not "contrary to law," "mischievous to the state," nor "generally inconvenient."

Lord *Coke*, in his reading on the Statute of Monopolies (3 Inst. 184), says, "Such a privilege as

Additions, &c., to Patented Inventions.

is consonant to law must be substantially and essentially newly invented, but if the substance was in use before, and a new addition thereunto, though that addition make the former more profitable, yet it is not a new manufacture in law; and so it was resolved in the Exchequer Chamber, Pasch. 15 Eliz., in *Bircot's Case,* for a privilege concerning the preparing and melting, &c., of lead ore; for there it was said, that that was to put but a new button to an old coat, and it is much easier to add than to invent." This doctrine has been overruled by subsequent decisions, which have settled that a patent for an addition is good, but it must be for the addition only, and not for the old machine too. In *Hornblower* v. *Boulton,* 8 T. R. 104, *Grose,* J., said, "A doubt is entertained whether there can be a patent for an addition to an old manufacture. This doubt rests altogether upon *Bircot's Case,* and if that were to be considered as law at this day, it would set aside many patents for very ingenious inventions in cases where the additions to machines before existing are much more valuable than the original manufactures themselves." . . . . "If, indeed, a patent could not be granted for an addition, it would be depriving the public of one of the best benefits of the statute of James. Lord Coke's opinion, therefore, seems to have been formed without due consideration, and modern experience shows that it is not well founded." So in *Lister* v. *Leather,* 8 E. & B. at p. 1017, Lord *Campbell* said, "The assertion that all patents for improvements of existing patents must be void, is obviously untenable." Even an addition to a machine or process for which a patent is in force may be the subject of a new patent; of which, however, without the consent of the former patentee, no use can be made that would be an infringement of his right: see *Ex parte Fox,* 1 Ves. & B. 67; *Fox* v. *Dellestable,* 15 W. R. 194.

New combination of old materials.

Lord *Eldon,* in the case of *Hill* v. *Thompson,* 3 Mer. 629, said, "That there might be a valid patent for a new combination of materials previously in use for the same purpose, or for a new method of apply-

Additions, &c., to Patented Inventions.

ing such materials; but the specification must be expressly confined to such new combination or application, and not lay claim to the merit of original invention in the use of the materials:" see *Muntz* v. *Foster*, 2 Web. P. C. 103; *Cannington* v. *Nuttall*, L. R. 5 H. L. 205; *Clark* v. *Adie* (No. 1), 2 App. Ca. 315. It is clear that a new combination of old materials to effect a new purpose may be the subject of a patent: *Huddart* v. *Grimshaw*, Daw. P. C. 267. See also *Foxwell* v. *Bostock*, 12 W. R. 725; *Bovill* v. *Keyworth*, 7 E. & B. 725; *Lister* v. *Leather*, 8 E. & B. 1004; *Dangerfield* v. *Jones*, 13 L. T. (N. S.) 142. But the mere adaptation of a well known process or machine to a new purpose will not support a patent, except so far as the method of application is new: *Pow* v. *Taunton*, 9 Jur. 1056; see *Bush* v. *Fox*, 5 H. L. C. 707; *Brook* v. *Aston*, 8 E. & B. 485; *Ralston* v. *Smith*, 11 H. L. C. 223; *Jordan* v. *Moore*, L. R. 1 C. P. 624; *Penn* v. *Bibby*, L. R. 2 Ch. A. 127; *Parkes* v. *Stevens*, L. R. 5 Ch. A. 36; and *à fortiori* where the adaptation is for the production of results the same as those produced by arrangements already in use: *Murray* v. *Clayton*, L. R. 7 Ch. A. 570. Where the object of a patent is old, and it is merely the means of effecting it which is new, the Court will construe the patent strictly, regarding with jealousy the claims of inventors to limit the rights of the public for effecting that which is already commonly known: *Curtis* v. *Platt*, 3 Ch. D. 135, n.; see *Patent Bottle Envelope Co.* v. *Seymer*, 5 C. B. (N. S.) 164; *Horton* v. *Mahon*, 12 C. B. (N. S.) 437; *Ormson* v. *Clarke*, 14 C. B. (N. S.) 475; *Rushton* v. *Crawley*, L. R. 10 Eq. 522.

Rule stated in *Spencer* v. *Jack*.

The rule as to new combinations of old materials is thus stated by Lord *Westbury* in *Spencer* v. *Jack*, 11 L. T. (N. S.) 242, "A combination of several things previously well known, which combination is attended with such results of utility and advantage to the public that that combination itself is rightly denominated a substantial improvement, it is impossible to deny that that is the subject of a patent." The question whether or not the alleged invention

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is such a substantial improvement as to support a patent is one of fact: see *Saxby* v. *Gloucester Waggon Co.*, 7 Q. B. D. at p. 307, in which case it was held that the invention was not a "substantial improvement," the Court being satisfied, on the evidence, that a person of ordinary skill and knowledge of the subject could effect the combination in a manner similar to the invention without further experiment or information.

Principles not subject of patent.

The discovery of an abstract principle is not of itself patentable. In *Hornblower* v. *Boulton*, 8 T. R. 95, a patent granted for a newly-invented method of lessening the consumption of steam and fuel in fire-engines by the application of certain principles, was held to be valid, on the ground that, although for a new principle, unorganised or unapplied to practice, there could be no patent, still there might be a patent for a method whereby the principle is so organised and applied: see also *Badische Anilin und Soda Fabrik* v. *Levinstein*, 24 Ch. D. 156; and the observations of *Fry*, L.J.; *S. C.* (on appeal), 29 Ch. D. at p. 402. So in *Boulton* v. *Bull*, 2 H. Bl. 463, *Eyre*, C.J., said, "When the effect produced is some new substance or composition of things, it should seem that the privilege of the sole working or making ought to be for such new substance or composition, without regard to the mechanism or process by which it has been produced, which, though perhaps also new, will be only useful as producing the new substance." . . . . "When the effect produced is no substance or composition of things, the patent can only be for the mechanism, if new mechanism is used, or for the process, if it be a new method of operating, with or without old mechanism, by which the effect is produced." . . . . "Undoubtedly there can be no patent for a mere principle, but for a principle so far embodied and connected with corporeal substances as to be in a condition to act and to produce effects in any art, trade, mystery, or manual occupation, I think there may be a patent." See also *Neilson* v. *Harford*, 8 M. & W. 806; *Patterson* v. *Gas Light and Coke Co.*, 3 App. Ca. 239.

So in *R.* v. *Wheeler*, 2 B. & Al. 345, Lord

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Tenterden, C.J., in his judgment remarked: "The word manufacture, in the statute of James, may, perhaps, extend also to a new process to be carried on by known implements or elements acting upon known substances, and ultimately producing some other known substance, but producing it in a cheaper or more expeditious manner, or of a better and more useful kind." . . . . "A person, therefore, who applies to the Crown for a patent may represent himself to be the inventor of some new thing, or of some new engine or instrument. And in the latter case, he may represent himself to be the inventor of a new method of accomplishing that object, which is to be accomplished by his new engine or instrument." . . . . "Or, supposing a new process to be the lawful subject of a patent, he may represent himself to be the inventor of a new process, in which case it should seem that the word 'method' may properly be used as synonymous with 'process.'" See also *Minter* v. *Wells*, 1 Cr. M. & R. 505; *Daw* v. *Eley*, L. R. 3 Eq. 496. In *Jupe* v. *Pratt*, 1 Web. P. C. 144, *Alderson*, B., said: "You cannot take out a patent for a principle; but you may take out a patent for a principle, coupled with the mode of carrying the principle into effect, provided you have not only discovered the principle, but invented some mode of carrying it into effect."

Utility of invention.

Utility of Invention.]—The question as to the amount of invention sufficient to support a patent resolves itself into the two branches of utility and novelty. In the words of *Buller*, J.: "In the case of an invention, many things may have been known before, yet if there be anything material and new, which is an improvement of the trade, that will be sufficient to support a patent; but whether it must be for the new addition only, or for the whole machine, would be another question:" *Rex* v. *Arkwright*, 1 Web. P. C. 64.

Haworth v. *Hardcastle.*

In *Haworth* v. *Hardcastle*, 4 Moo. & S. 720, the plaintiff obtained a patent for machinery adapted to facilitate the drying of calicos and other fabrics, and the jury found "that the invention was new, and

Utility of Invention.

useful on the whole; that the specification was sufficient, and that there had been an infringement; but the machine was not useful in some cases for taking up goods." It was held, that, as this finding did not negative the utility of the machine in the majority of cases, the plaintiff was entitled to a verdict.

Partial inutility will not vitiate the patent.

Morgan v. *Seaward.*

In *Morgan* v. *Seaward,* 1 Web. P. C. 172, *Alderson,* B., directed the jury that the amount of utility was not to be considered, but only the question whether there was any utility at all in the invention; see *Losh* v. *Hague,* 1 Web. P. C. 205. Evidence as to the general adoption of the invention in practice is material to the question of utility: *Morgan* v. *Seaward, supra.*

Amount of utility.

Variation without increased utility.

If a patent has been obtained for effecting a certain object by certain means, it seems that another invention for effecting the same object in no better manner, but by different means, is not objectionable for want of utility. See *Hullett* v. *Hague,* 2 B. & Ad. 370.

Distinction as to partial inutility.

If a part of one entire invention turns out to be useless, and is not described in the patent as an improvement, the patent may notwithstanding be good; but if several distinct inventions are included in one patent, and one of them, being described in the patent as an improvement, is not so, the patent fails altogether: *Lewis* v. *Marling,* 10 B. & C. 22; see also *Crossley* v. *Beverley,* 3 C. & P. 513. What is the requisite amount of utility to support a patent was considered in *Plimpton* v. *Malcolmson,* 3 Ch. D. 557. The question as to whether an invention is useful or not is for the jury: *Hill* v. *Thompson,* 1 Web. P. C. 237; *Cornish* v. *Keene,* Ib. 506; *Bloxham* v. *Else,* 1 C. & P. 565.

Morgan v. *Seaward.*

One of several inventions included in one patent being useless held to vitiate the whole.

In *Morgan* v. *Seaward,* 2 M. & W. 544, where a patent was obtained for an improvement in steam-engines, and also for an improvement in machinery for propelling vessels (*i.e.,* in the paddle wheels), it being found by the jury that the invention claimed as an improvement in steam-engines was not useful, the patent was held void, *Parke,* B. said, "Upon the authorities we feel obliged to hold that the patent is void, upon the ground of fraud on the Crown, without entering into the question whether

Utility of Invention.

the utility of each and every part of the invention is essential to a patent, where such utility is not suggested in the patent itself as the ground of the grant. That a false suggestion of the grantee avoids an ordinary grant of lands or tenements from the Crown is a maxim of the common law, and such a grant is void, not against the Crown merely, but in a suit against a third person : *Travell* v. *Carteret*, 3 Lev. 135 ; *Alcock* v. *Cooke*, 3 Bing. 340. It is on the same principle that a patent for two or more inventions, when one is not new, is void altogether (*h*) : as was held in *Hill* v. *Thompson*, 2 Moo. 242 ; and *Brunton* v. *Hawkes*, 4 B. & Al. 542 ; for although the statute invalidates a patent for want of novelty, and consequently, by force of the statute, the patent would be void, so far as related to that which was old, yet the principle on which the patent has been held to be void altogether is, that the consideration for the grant is the novelty of all, and the consideration failing, or in other words, the Crown being deceived in its grant, the patent is void, and no action maintainable on it. We cannot help seeing on the face of this patent, as set out in the record, that an improvement of steam-engines is suggested by the patentee, and is part of the consideration for the grant ; and we must reluctantly hold that the patent is void for the falsity of that suggestion. In the case of *Lewis* v. *Marling*, *supra*, this view of the case, that the patent was void for a false suggestion, does not appear by the report to have been pressed on the attention of the Court, or been considered by it. The decision went on the ground that the brush was not an essential part of the machine, and that want of utility did not vitiate the patent ; and besides, the improvement by the introduction of the brush is not recited in the patent itself as one of the subjects of it, which may make a difference." And his Lordship added : "On a review of the cases it may be doubted whether the question of utility is anything more than a compendious mode, introduced in

False suggestion.

Whether a patent, part of which is bad by the statute, is bad for that reason *in toto*.

(*h*) Under the recent Act a patent is to be granted for one invention only : see sect. 33.

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comparatively modern times, of deciding the question whether the patent be void under the Statute of Monopolies. And we do not mean to intimate any doubt as to the validity of a patent for an entire machine or subject which is, taken altogether, useful, though a part or parts may be useless, always supposing that such patent contains no false suggestion." This case, therefore, is not an authority to show that a patent for two distinct inventions, one of which only is useless, is void for both, if it contains no false suggestion; but it must be remembered that there is no authority in favour of the partial validity of a patent under such circumstances: see *Turner* v. *Winter*, 1 T. R. 608; *Jessop's Case*, 2 H. Bl. 489; *R.* v. *Wheeler*, 2 B. & Al. 345; *Felton* v. *Greaves*, 3 C. & P. 61.

Novelty of Invention.]—In treating of the novelty of the subject-matter, we may first mention those cases in which there was no dispute as to the fact of novelty, and the question merely was, whether what was admitted to be new was of sufficient amount and importance to support a patent.

Matthey's case. Improvement too trifling.

In *Matthey's Case* (cited Noy, 183), a patent for making knives with bone hafts and plates of latten was held void, it appearing that knives had been previously so made, but not with bone hafts; so that what was really new was too trifling to be the subject of a patent. In *Webster* v. *Uther*, Gods. Pat. 232, the patent was for the addition to the percussion-gun lock of a bolt sliding in a groove, to fix the roller magazine, instead of the screw and washer previously used; and though Lord *Tenterden* told the jury that it was the smallest matter for which he ever knew a patent taken, the patent was sustained and a new trial was refused: see *Rex* v. *Lister*, Gods. 274. In *Lewis* v. *Davis*, 1 Web. P. C. 488, a variation of the process of shearing cloth by doing it from list to list by rotatory cutters, the shearing of cloth from list to list by shears, and from end to end by rotatory cutters being known, was held by Lord *Tenterden*, C.J., a sufficient invention to support a patent. But in the case of *Walker* v. *Congreve*, Gods. Pat.

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56, Sir *J. Leach*, M.R., held, that the introduction of a cylindrical hooped barrel, or cask (made, it seems, of brass), for carrying gunpowder, with a stopper resembling a pot lid, was not such an exercise of skill and invention as would deserve a patent. "A new principle must be discovered, skill and ingenuity must be exerted to entitle an inventor to a patent; the making of an old machine of new materials would not be a discovery, and the plaintiff could claim no protection for an invention, the only merit of which consisted in being made of brass, instead of wood." But this doctrine must be applied with caution. A similar opinion, however, seems to have been entertained by Lord *Abinger*, C.B., in the case of *Losh* v. *Hague*, 1 Web. P. C. 207, where his Lordship said, you might take out a patent for applying a new contrivance to an old object, but not for applying an old contrivance to a new object.

New combination of old materials.

But a new combination of old materials so as to effect an old purpose more efficiently, speedily, or inexpensively, may support a patent; see *Crane* v. *Price*, 1 Web. P. C. 393, where the use of anthracite coal in smelting iron being known, and the use of a hot blast in smelting iron being also known, the use of anthracite coal and a hot blast in smelting iron was held a good subject-matter. See also *Cornish* v. *Keene*, 4 Sc. 337; *Huddart* v. *Grimshaw*, Dav. P. C. 267; *Foxwell* v. *Bostock*, 12 W. R. 725.

Court will strive to support a patent.

The tendency of the courts has generally been to support patents, where an objection is made on the ground of want of novelty. "In the construction of a patent, the Court is bound to read the specification, so as to support it if it can fairly be done." Per *Parke*, B., in *Russell* v. *Cowley*, 1 Web. P. C. 573. So in *Hullett* v. *Hague*, 2 B. & Ad. 377, Lord *Tenterden*, C.J., said, "I cannot forbear saying, that I think a great deal too much critical acumen has been applied to the construction of patents, as if the object was to defeat, and not to sustain them."

That an omission of a useless part in a known machine may be a good subject-matter, see also a dictum in *Minter* v. *Mower*, 1 Nev. & P. 602. An addition to a known machine or process has long

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been settled to be a sufficient subject-matter. *Vide ante*, pp. 612 *et seq.*; *Bovill* v. *Moore*, 2 Marsh. 211.

In *Hall* v. *Jarvis*, 1 Web. P. C. 100, the patent was for a process of burning the loose fibre off from lace, by passing the lace rapidly through the flame of gas, which was forced into the interstices of the lace by a current of air produced by a chimney above the flame and lace. It was held to be no objection to the novelty of the invention, that flame from oil and other substances with or without a chimney below, and the flame of charcoal urged by bellows, had been previously used; the use of gas flame and of a chimney above the lace being new.

Brunton v. *Hawkes*. A new application of an old process to uses similar to old uses, held not sufficiently novel.

In *Brunton* v. *Hawkes*, 4 B. & Al. 547, a patent was taken out for an improvement in the making of ships' anchors. The improvement consisted in making both arms and flukes in one piece, with a conical hole in the middle to receive the end of the shank. The arms of ships' anchors had always been made in separate pieces, and welded on to the shank; but mooring anchors of the kinds called adze anchors and mushroom anchors had (from the necessity of the thing arising out of their peculiar form) been made in manner applied by the patentee to ships' anchors. It being left to the jury to find, whether the inventions both as to the chain and anchor were new and useful—a verdict was found for the plaintiff. A new trial was directed by the Court of King's Bench on the ground of want of novelty as to the anchor. *Abbott*, C.J., said, "A patent for a machine, each part of which was in use before, but in which the combination of the different parts is new, and a new result produced, is good, because there is a novelty in the combination. But here the case is perfectly different. Formerly three pieces were united together, the plaintiff only unites two; and if the invention of those two had been effected in a mode unknown before as applied in any degree to similar purposes, I should have thought it a good ground for a patent; but unfortunately the mode was well known, and long practised. I think that a man cannot be entitled to a patent for uniting two things instead of three, when that union

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is effected in a mode well known and long practised for a similar purpose."

In Kay's patent for preparing and spinning flax, two processes were claimed,—the first consisted in macerating the material in water, so as to separate the long compound fibres into their elementary or constituent fibres, which were about two inches and a half in length; and the second consisted in spinning the prepared material in a wet state at a common spinning machine with a shorter reach than usual, namely, two inches and a half. The specification claimed the machinery. The use of the common spinning machine in dry spinning at a variable reach, according to the length of the fibre to be spun, was known: the reach in cotton spinning varying from seven-eighths to a quarter of an inch; in flax spinning from fourteen to twenty-one inches, &c. The defendant had used a different process of macerating the flax, not within the plaintiff's patent, and had spun it at a short reach, as claimed by the plaintiff. It was held that the patent was bad: *Re Kay's Patent*, 1 Web. P. C. 568.

Want of novelty as to part invalidates the whole.

If part of one entire process or machine claimed by patent is not new, the patent is void altogether: *Hill* v. *Thompson*, 2 Moo. 441; *Losh* v. *Hague*, 1 Web. P. C. 202; *Williams* v. *Brodie*, cit. *Rex* v. *Arkwright*, 1 Web. P. C. 66; *Kay* v. *Marshall*, Dav. P. C. 137; 2 Web. P. C. 39. So, if a patentee, who has improved a machine already in use, claims, by his specification, the general principle which is involved in both machines, the patent of course fails for want of novelty: *Minter* v. *Mower*, 6 A. & E. 735.

Novelty in respect of *public user*.

Novelty was, at common law, essential to the validity of a patent for an invention: see *Hastings' Case*, Noy, 183; *Bircot's Case*, 3 Inst. 184. But novelty within the realm is sufficient, both by the common law and by the terms of the statute of James, so that proof of prior use beyond the seas is not material: *Edgebury* v. *Stephens*, 2 Salk. 447; *Lewis* v. *Marling*, 4 Car. & P. 55. It is indifferent whether the discovery is made by study or travel: 2 H. Bl. 491.

Whether prior user in one part of the

Formerly separate patents were granted for England, Scotland, and Ireland. An important question

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United Kingdom will defeat a patent.

arose upon this, whether novelty in one of those districts was sufficient to support a patent for a subject-matter already publicly used or known in some other of them; whether, for instance, after obtaining a patent for England, and filing his specification, the inventor was precluded from obtaining a valid patent for Scotland, although the invention was not shown to have become known within that country. In a case of *Roebuck* v. *Sterling*, 1 Web. P. C. 45, it appears to have been held that a publication in England was a publication in Scotland; and it is said that in a later case, mentioned by Mr. Carpmael (Patents, pref. i.), the same point was decided: *Brown* v. *Annandale*, in Dom. Proc. See *Universities of Oxford and Cambridge* v. *Richardson*, 6 Ves. 698.

The Patent Act, 1852, authorised the grant of patents under one seal to extend throughout the United Kingdom, the Isle of Man, and the Channel Islands; and the Act of 1883, sect. 18, enacts that "every patent, when sealed, shall have effect throughout the United Kingdom and the Isle of Man." It was held, under that Act and the Amending Act of 1853, that a patent under one seal for the prolongation of three separate patents for England, Scotland, and Ireland respectively, which had been granted under the old law, operated as if the three patents had been separately prolonged, so that the fact of one of the original patents being void for want of novelty, would not affect the validity of the prolongation patent as regarded the other two patents. But it has not been decided what would be the effect of want of novelty in one of the three kingdoms in the case of an original patent granted under the seal of the United Kingdom, or of the Patent Office.

What is a public user or knowledge.

Next, as to what amounts to a public user. In *Boulton* v. *Bull*, 2 H. Bl. 470, 487, *Buller*, J., said—"The objection to Dollond's patent was, that he was not the inventor of the new method of making object-glasses, but that Dr. Hall had made the same discovery before him. But it was holden that, as Dr. Hall had confined it to his closet, and the public were not acquainted with it, Dollond was to be considered as the inventor." But a previous publication of the

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Publication in a book.

invention in a published book would be sufficient to defeat the patent: *Hill* v. *Thompson*, 2 Moo. 434, 456. See also the remarks of *Alderson*, B., in *Morgan* v. *Seaward*, 2 M. & W. 553; and see *Plimpton* v. *Spiller*, 6 Ch. D. 412; *United Telephone Co.* v. *Harrison, Cox, Walker, & Co.*, 21 Ch. D. 720.

Forsyth v. *Riviere.*

Several inventors.

In *Forsyth* v. *Riviere*, Chitt. Prerog. 182, n., *Abbott*, C. J., held, that if several simultaneously discover the same thing, the party who first communicates it to the public is entitled to the benefit of it. But it is otherwise if he has borrowed it from another within the realm. The principle appears to be, that if a patent is obtained on the representation that the applicant is the inventor, and it turns out that he has borrowed the invention from another, the Crown is deceived, and the patent void; but if he states that he has received communications from abroad, the Crown is not deceived, nor is the requisite of novelty within the realm infringed.

Public sale.

A patent cannot be sustained for an invention that has been publicly (*Bramah* v. *Hardcastle*, Holroyd, Pat. 81) used or sold, even by the inventor himself, during any period, however short, before the grant of the patent: *Wood* v. *Zimmer*, Holt, 58. Of course, no evidence by witnesses conversant with the manufacture, however numerous, that they were not acquainted with the improvement previously to the patent, will countervail evidence of a single previous user in public: *Rex* v. *Arkwright*, Dav. P. C. 137; 1 Web. P. C. 64; *Hill* v. *Thompson*, 2 Moo. 424; 8 Taunt. 375.

But to invalidate the patent, either the invention itself must have been published in a book (*supra*), or the use of it must have been public, or else the patentee must have borrowed his invention from some one in this country; and therefore it was held, where, without the knowledge of the patentee, and before his patent was granted, a model of a similar machine had been made by another person in consequence of communications from America, and the construction of a working machine had been commenced, but never completed, the patent was nevertheless good: *Lewis* v. *Marling*, 4 Car. & P. 55.

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See further as to publication by sale: *Morgan* v. *Seaward*, 2 M. & W. 545; *Mullins* v. *Hart*, 5 Car. & K. 297; *Heath* v. *Smith*, 2 Web. P. C. 268; *Oxley* v. *Holden*, 8 C. B. (N. S.) 666.

Public use.

In *Carpenter* v. *Smith*, 9 M. & W. 300, it was proved that a lock, for which the plaintiff had obtained a patent, had been used by an individual on a gate adjoining a public road for several years before the patent; and several dozens of a similar lock had been previously made at Birmingham from a pattern received from America, and sent abroad. This was held to be a public use of the invention. *Alderson*, B., said—"Public use means a use in public, so as to come to the knowledge of others than the inventor, as contradistinguished from the use of it by himself in his chamber." See also *Minter* v. *Mower*, 1 Web. P. C. 139; and *Jones* v. *Pearce*, 1 Web. P. C. 124; where *Patteson*, J., said, that an experiment which did not answer, and was abandoned, and never followed up, was not a user sufficient to invalidate a subsequent independent and successful invention.

Experiments.

Prior user of an invention in a British colony will not invalidate a patent throughout the United Kingdom and the Isle of Man: *Rolls* v. *Isaacs*, 19 Ch. D. 268.

The Specification and Title of an Invention.

Application to be accompanied by provisional or complete specification.

Specification must accompany Application.]—Every application for a patent must be accompanied by a provisional or complete specification: see sect. 5 of the Act of 1883, *ante*, p. 602. That section also contains the following enactments with regard to specifications:—

"(3.) A provisional specification must describe the nature of the invention, and be accompanied by drawings, if required (*h*).

"(4.) A complete specification, whether left on application or subsequently, must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings, if required (*h*).

(*h*) As to drawings, see *post*, p. 641.

Drawings.

Title and Specification.

"(5.) A specification, whether provisional or complete, must commence with the title, and in the case of a complete specification must end with a distinct statement of the invention claimed."

And by sect. 6 of the same Act:—

Reference of application to examiner.

Sect. 6. "The comptroller shall refer every application to an examiner, who shall ascertain and report to the comptroller whether the nature of the invention has been fairly described, and the application, specification, and drawings (if any) have been prepared in the prescribed manner, and the title sufficiently indicates the subject-matter of the invention."

On the examiner's report the comptroller may reject the application or require its amendment, subject to the applicant's right of appeal to the law officer: see *ante*, p. 606.

Specification construed favourably.

Of late years the Courts have departed from the rigid rules of construction (*i*) adopted in many early cases (see 2 Moo. 450), and have inclined rather to favour than to destroy the validity of patents and specifications: see *Haworth* v. *Hardcastle*, 4 Moo. & Sc. 733.

The general requisites to the title and specification of a patent are, that neither the Crown nor the public be deceived or misled, and that the public be put in possession of all the information respecting the use of the invention which the inventor has at the time of filing his specification.

The title must not mislead.

The Title.]—It is not necessary that the title of the patent should do more than convey a general idea of the nature of the invention: see *Minter* v. *Mower*, 1 Web. P. C. 141. But the title must not tend in any way to mislead the Crown or the public in this respect: see *Household Co.* v. *Neilson*, 1 Web. P. C. 678; *Cook* v. *Pearce*, 8 Q. B. 1004; so in *R.* v. *Metcalf*, 2 Stark. 249, where a patent had been obtained for "a *tapering* brush," the specification describing a brush made merely of bristles of unequal length, mixed together, the patent was held

Rex v. *Metcalf.*

(*i*) The construction of the specification is for the Court, not for the jury: see *Neilson* v. *Harford*, 8 M. & W. 819.

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bad. Titles which are too extensive have frequently been held bad on the ground of fraud on the Crown: *Felton* v. *Greaves*, 3 C. & P. 611; *Brunton* v. *Hawkes*, 4 B. & Al. 552. So in *Newall* v. *Elliott*, 10 Jur. (N. S.) 955, the title "an improvement in locomotion" was held to be too general. In *Cochrane* v. *Smethurst*, 1 Stark. 205, an improved lamp was held to be ill described in the patent, as "an improved method of lighting cities, towns, and villages." In *Bloxam* v. *Elsee*, 6 B. & Cr. 169, the false suggestion was not contained in the title, but in the body of the petition, and was thence imported into the patent, which recited that the patentee had represented that he was in possession of *a* machine for making paper in single sheets, without seam or joining, *from one to twelve feet and upwards wide*, and from one to forty-five feet and upwards in length. The machine was only capable of making paper of one width; but a machine on the same principle might have been constructed to make it of any one other given width. The patent was held void for false suggestion. It will be a fatal objection that the title is larger than the specification: *Derosne* v. *Fairie*, 2 Cr., M. & R. 476; *Nickolls* v. *Hoslam*, 13 L. J. C. P. 146; *Croll* v. *Edge*, 9 C. B. 479; *Wright* v. *Hitchcock*, L. R. 5 Ex. 37. In the case of *R.* v. *Wheeler*, 2 B. & Al. 345, the patent was for "a new or improved method of drying and preparing malt," which was construed to mean a method of making malt from barley, whereas the specification disclosed an invention for preparing a colouring matter for beer from malt already manufactured, and the patent was held void on that account. But where there is no variance between the title and the specification, and no evidence of fraud on the Crown, it would seem that mere vagueness of title will not avoid a patent: *Cook* v. *Pearce*, 8 Q. B. 1054; see *Stead* v. *Williams*, 2 Web. P. C. 137. In *Sturtz* v. *De la Rue*, 5 Russ. 322, the patent was "for certain improvements in copper and other plate printing," and the specification described a process for putting a glazed surface on the paper or card intended to receive the impression, thereby bringing out the finer lines with greater

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distinctness. It was held that the title contained a sufficient description of the invention.

The title and specification are to be read together, and the former, if ambiguous, may be explained by the latter: *Neilson* v. *Harford*, 8 M. & W. 819.

Functions of the provisional specification.

The Provisional Specification.]—Formerly applications for patents were generally made on the title alone, but this practice being found inconvenient, the Patent Law Amendment Act, 1852 (now repealed) provided that the petition should be accompanied by a provisional specification; and this course may be adopted under the present Act. The office of the provisional specification has been held to be merely to describe generally the nature of the invention, and not to enter into details as to the manner in which the invention is to be carried out, which is the function of the complete specification: *Re Newall*, 4 C. B. (N. S.) 269; *S. C.*, 10 Jur., N. S. 955. A provisional specification may be regarded as an amplification of the title.

Relation of provisional to complete specification.

In *Penn* v. *Bibby*, L. R. 2 Ch. at p. 132, Lord *Chelmsford*, C., said—"It seems clear that the office of the provisional specification is to describe the nature of the invention, not with minute particularity, but with sufficient precision and accuracy to inform the law officer what is the subject-matter of the patent. It is not necessary that the provisional specification should describe the mode or modes in which the invention is to be worked or carried out. That is left to the complete specification." And his lordship, after pointing out that the relation which the provisional specification bears to the complete specification is much the same as that which formerly the title bore to the specification, and, citing with approval the decision in *Cook* v. *Pearce*, 8 Q. B. 1004, that mere vagueness of title would not avoid a patent after it had been granted (*ante*, p. 627), said, with reference to the case before him—"The only objection, then, which is open, is upon the complete specification, whether it is sufficient in itself, and whether it agrees with the provisional specification. Now by agreement is not meant a perfect corre-

spondence, but merely that there shall be nothing in the complete specification at variance with the provisional": *Ibid* at p. 133. See also *Stonor* v. *Todd*, 4 Ch. D. 58; *Bailey* v. *Robertson*, 3 App. Ca. 1055. Title and Specification.

The Complete Specification.]—The filing of a complete specification is an essential part of the consideration, on which a grant of letters patent is made. The Act of 1883 contains the following provisions with regard to leaving complete specifications:— Complete specification.

Sect. 8. "(1.) If the applicant does not leave a complete specification with his application, he may leave it at any subsequent time within nine months from the date of application. Time for leaving complete specification.

"(2.) Unless a complete specification is left within that time the application shall be deemed to be abandoned."

Sect. 9. "(1.) Where a complete specification is left after a provisional specification, the comptroller shall refer both specifications to an examiner for the purpose of ascertaining whether the complete specification has been prepared in the prescribed manner, and whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification. Comparison of provisional and complete specification.

"(2.) If the examiner reports that the conditions hereinbefore contained have not been complied with, the comptroller may refuse to accept the complete specification unless and until the same shall have been amended to his satisfaction; but any such refusal shall be subject to appeal to the law officer (*j*).

"(3.) The law officer shall, if required, hear the applicant and the comptroller, and may make an order determining whether and subject to what conditions, if any, the complete specification shall be accepted.

"(4.) Unless a complete specification is accepted within twelve months from the date of application, then (save in the case of an appeal having been lodged against the refusal to accept) the application shall, at the expiration of those twelve months, become void.

"(5.) Reports of examiners shall not in any case be published or be open to public inspection, and shall not be liable to production or inspection in any legal proceeding, other than an appeal to the law officer under this Act, unless the court or officer having power to order discovery in such legal proceeding shall certify that

(*j*) As to amendment of specification, see *post*, p. 648.

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such production or inspection is desirable in the interests of justice, and ought to be allowed."

Advertisement on acceptance of complete specification.

Sect. 10. "On the acceptance of the complete specification the comptroller shall advertise the acceptance; and the application and specification or specifications with the drawings (if any) shall be open to public inspection."

Variance between provisional and complete specification.

The applicant is at liberty to omit from his complete specification any part of the provisional specification if there is no fraud, and if the omission does not materially alter the nature of the invention: *Thomas* v. *Welch*, L. R. 1 C. P. 192. But though the invention as described in the provisional specification may be developed and perfected, as the result of the experiments and increased knowledge of the applicant: yet he must be careful that the description of his invention in the complete specification does not introduce any addition or alteration which would render the invention so described a substantially different invention from that described in the provisional specification: *Bailey* v. *Robertson*, 3 App. Ca. 1055: see *United Telephone Co.* v. *Harrison*, 21 Ch. D. 721.

The specification must be confined to that which is new and useful.

The rule that nothing must be claimed by the specification that is not new and useful has already been incidentally spoken of in treating of the subject matter of patents (*ante*, pp. 612, *et seq.*), and does not afford many further points for observation. The ground of the rule was thus concisely stated by Lord *Kenyon*, C. J., in the case of *Bramah* v. *Hardcastle*, Holroyd on Patents, 181: "Unlearned men look at the specification, and suppose every thing new that is there. *If the whole be not new, it is hanging terrors over them.*" See *Huddart* v. *Grimshaw*, Dav. Pat. Cas. 279; Webst. Pat. Cas. 87.

Specification for an improvement must be confined to the improvement.

When the invention consists of an improvement on a known machine or process, and it is found necessary or convenient to describe parts of the old machine or process, the specification must distinguish what is new from what is old, and except the latter from its claim. *M'Farlane* v. *Price*, 1 Stark. 199; *Saunders* v. *Aston*, 3 B. & Ad. 881; *Rex* v. *Cutler*, 1 Stark. 354; *Hill* v. *Thompson*, 2 Moo. 451, 455; *Haworth* v. *Hardcastle*, 4 Moo. & Sc. 733 (*b*); *Kay* v. *Marshall*, 2 Web. P. C. 39; *Eades* v.

Starbruck Waggon Co., W. N. 1881, p. 160. In *Harmar* v. *Playne*, 11 East, 101, the patentee of a new machine having afterwards obtained another patent for improvements in it, in which patent the former grant was described, it was held (after some doubt), that the specification to the second patent was good, although it described the whole machine without distinguishing improvements. But it would not be now safe to rely on this decision. Title and Specification.

In *R.* v. *Else*, Bull. N. P. 76, the patentee claimed generally the making of lace, composed of silk and cotton threads mixed, and specified a mode of effecting the mixture; but such mixture had been made before, although the patentee's method was new. It was held, that the patent, not being confined to the particular method, was void. *R.* v. *Else.*

In *Bovill* v. *Moore*, 2 Marsh. 211; Dav. Pat. Cas. 361; J. Browne obtained a patent for a machine for the manufacture of bobbin lace, or twist net. It appeared that the operation of the machine in part resembled that of the old machines, and particularly of one for which a patent had been obtained two years previously. The specification, claiming the whole machine, was held bad. *Bovill* v. *Moore.*

So, in *Campion* v. *Benyon*, 6 Moo. 71; 3 Br. & B. 5, where the patent was for "a new and improved method of making double canvas and sail-cloth with hemp and flax, without any starch whatever," and the specification stated, that the use of starch was injurious to the texture of the canvas, and that the method consisted in not using starch or any moist application, and in a certain mode of twisting the threads. It was proved that sail-cloth had been previously made without the use of starch; and the patent was held to be bad, on the ground that the patent and specification did not, *with sufficient clearness*, confine the patentee's claim to that which was his own invention, namely, the texture, or new mode of producing a known effect, to the exclusion of starch. *Campion* v. *Benyon.*

And, generally, if a person discovers a new mode of applying a principle to practice, which principle has already been applied in a different mode, his New application of a known principle.

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patent is bad if he claims the principle generally, and does not confine it to the particular mode of application which is new: *Rex* v. *Cutler*, 1 Stark. 354; *Minter* v. *Mower*, 6 A. & E. 735, 595; *Hullett* v. *Hague*, 2 B. & Ad. 370; *Arnold* v. *Bradbury*, L. R. 6 Ch. 706; *Wegman* v. *Corcoran*, 13 Ch. D. 65.

Discovery of a principle involved in a known manufacture, but not previously recognised as a principle.

And even if a machine has been previously patented, which involves a principle, although such principle was not known to the inventor, who has consequently failed in making his machine perfectly, or appropriating the principle, yet a subsequent inventor, who has discovered the principle, and pointed out the means of applying it perfectly, cannot, it should seem, sustain a patent for the application of the principle generally, as he might have done if it had never been before applied at all, nor can he claim the application of it in every mode, except the particular mode previously used. He must in such case confine his claim to such mode or modes of application as he has actually invented and specified; and a different application from any of those specified would be no infringement. See *Hall* v. *Thompson*, 2 Moo. 424; and *Hullett* v. *Hague*, 2 B. & Ad. 370, where this defect was very neatly avoided. See also *Frearson* v. *Loe*, 9 Ch. D. 64.

Minter v. *Mower*.

In *Minter* v. *Mower*, 1 Nev. & P. 595, on the other hand, it appeared that Brown had made a chair with a moveable back and seat, connected and balanced by levers, and with a rack, pinion, and spring, so placed that the back was only moveable, while the rack and pinion were detached by pressure on the spring. Minter afterwards took out a patent for a self-adjusting chair, the back and seat of which were moveable by the mere motion of the sitter, without any action on a spring, and which was the same as Brown's chair, except in the omission of the rack, pinion, and spring. The jury found that Brown was the inventor of the machine, and found out the principle, but not the practical purpose to which Minter applied it. The specification was held bad. Lord *Denman*, C. J., said, "It was perfectly clear upon the evidence, that the description in the specification applies to Brown's chair, although that

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was encumbered with some additional machinery. The specification, therefore, claimed more than the plaintiff had invented, and would have actually precluded Mr. Brown from continuing to make the same chair that he had made before the patentee's discovery. See also *Hill* v. *Thompson*, 2 Moo. 424.

Objection to specification as claiming a principle.

As a specification is bad if it claim, as part of the protected manufacture, any thing which for want of novelty or utility, is not a subject-matter for a patent; so, it has frequently been said, that it will be bad if it claim a *principle* instead of a manufacture. That this is not true, if by "principle" is understood a rule of operating or making, has been already seen, *ante*, p. 615, and even with reference to a claim of a philosophical or abstract principle, it requires some explanation. If a man claims by his specification merely the possession of an abstract philosophical principle, he does not claim any manufacture or *modus operandi*, and does not, therefore, claim to interfere with any manufacture by others; so that his claim in this respect is merely of a shadow, and does not "hang up terrors" over others. Such a claim could hardly be made a ground for vacating a patent, if combined with a distinct claim to a manufacture; and if not so combined, it could by its own terms convey no exclusive privilege. If he claim the *application* of an abstract principle to a useful purpose in manufactures, then he does not claim the abstract principle, but only its application in any way that may be suggested; and if he do not suggest any particular way of applying it, his specification fails, not because it claims a principle, but either because the inventor has not reduced his invention to practice, or because he does not communicate by his specification all the knowledge that he possesses relating to the practice of it.

Wherever this question has been raised, and the patent has failed, it has failed either because the specification claimed a principle already appropriated or because it did not truly and fully explain the method of carrying it into practice. Since the decision in *Hornblower* v. *Boulton* (*ante*, p. 615), the real question always has been, whether

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or not the patentee has claimed anything already known, or which he does not by his specification disclose to the public: see also *Badische Anilin und Soda Fabrik* v. *Levinstein*, 24 Ch. D. 156.

Specification must contain full and clear directions to practise the invention in the best manner known to the patentee.

Another requisite to a specification is, that it should contain a description of the mode of performing the invention, sufficient to enable an ordinary workman conversant with the manufacture to perform it, without making experiments, or exercising his invention; for the meaning of the specification is, that after the term the public shall have the benefit of the discovery: *Liardet* v. *Johnson*, Bull. N. P. 76; *Newbury* v. *James*, 2 Mer. 451; *Minter* v. *Wells*, Web. P. C. 133. See also the elaborate judgment of *Eyre*, C. J., in *Boulton* v. *Bull*, 2 H. Bl. 463, which contains almost every thing that is necessary to be said. The merit and utility of the invention in that case not consisting in any peculiar form of the different parts to be used, it was not necessary to specify the form of them, but it was sufficient to describe their nature in general terms.

Crossley v. *Beverley.*

In *Crossley* v. *Beverley*, 9 B. & C. 63; 1 Web. P. C. 112, it was objected to a patent, that the patentee had invented certain parts of the apparatus described in the specification subsequently to the taking out of the patent, and therefore that the specification was of an invention different from that for which the patent was taken out, and avoided the patent; but the Court overruled that objection, the improvements being all a carrying out of the original principle, and said that it was the duty of a person taking out a patent to communicate to the public any improvements that he might make upon his invention before the specification has been enrolled; and that the time for enrolling the specification was given for no other purpose than to enable him to bring his invention to perfection. In *R.* v. *Wheeler*, the patent failed on several grounds; one being that the description of the process was not sufficiently precise. "The patentee has not described any certain or proper process, which admitting that there may be a process for a method

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only, ought unquestionably to be done. A specification which casts upon the public the expense and labour of experiment and trial, is undoubtedly bad. If it be said that all these matters will be well or easily known to a person of competent skill (and to such only the patentee may be allowed to address himself), then the inventor will not in reality have given any useful or valuable information to the public." *Per* Lord *Tenterden*, C. J., 2 B. & Al. at pp. 353, 354. See also the remarks of *Alderson*, B., in *Morgan* v. *Seaward*, 1 Web. P. C. 175. The decision certainly stands in contrast to the holding of Lord *Tenterden*, C. J., in *Crossley* v. *Beverley*, *supra*, where it was objected that the specification of an improved gas-apparatus contained no directions respecting a condenser which was essential, and well known to be essential, to every gas-apparatus. His Lordship said, "a workman capable of making a gas-apparatus, would know that he must put that in. The specification does not tell you to leave it out."

Omission of directions respecting a thing well known to be essential, is no defect.

Morgan v. *Seaward*.

In *Morgan* v. *Seaward*, Web. P. C. 167, an objection was raised to the specification of an invention of a paddle-wheel which should make the floats dip at any required angle, that no rules were given by which the proportions of the several parts requisite to produce the required effect could be ascertained. *Alderson*, B., directed the jury very strongly against the sufficiency of the specification, and said, that if it was necessary to solve a problem before it could be carried into execution, it was bad, unless the solving of such problem was an ordinary part of the business of persons conversant with the particular art; and even then, it should have been suggested what was the problem to be solved.

Simpson v. *Holiday*.

In *Simpson* v. *Holiday*, L. R., 1 H. L. 315, the specification of an invention for improvement in the preparation of red and purple dyes, thus described the process: "I mix aniline with dry arsenic acid, and allow the mixture to stand for some time; *or* I accelerate the operation by heating it," &c. It was proved that *heat was essential* to produce the process, but evidence was given that a competent

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workman would know that it must be applied; but the description was held to be insufficient.

R. v. *Arkwright.*

In the case of Arkwright's patent (*Rex* v. *Arkwright*, Dav. Pat. C. 61; 1 Web. P. C. 64), the patent failed, partly because the specification claimed what was not new, partly because it did not fully describe what was new, and partly because it described what was useless, as if it were essential. The specification stated, that the invention consisted of ten particulars, and described them, without stating that it was not necessary to use all. It was proved that four of them were sufficient, and contained the merit of the invention. See also the observations of Lord *Ellenborough*, C. J., in *Huddart* v. *Grimshaw*, Dav. P. C. 295.

Lewis v. *Marling.*

Statement of useless parts.

In *Lewis* v. *Marling*, 4 Car. & P. 52; 10 B. & C. 22, the specification of an invention for shearing cloth claimed several things, and among them—"*Third*, a proper substance to brush the cloth," which was described. At the time the patentee obtained his patent, he had made his machine with this brush, but finding it to be useless when the machine was made in the best manner, he abandoned it, and never sold a machine with it. It was held that this fault did not defeat the patent, as the brush was nowhere described as an essential part of the invention. "I agree, that if the patentee mentions that as an essential ingredient in the patent article, which is not so, nor even useful, and thereby he misleads the public, his patent may be void." *Per* Lord *Tenterden*, C. J. See *Haworth* v. *Hardcastle*, 4 Moo. & Sc. 720; *Badische Anilin und Soda Fabrik* v. *Levinstein*, 24 Ch. D. 156.

Statement must describe the best mode of operation.

The mode of working or applying the invention stated in the specification must be the best mode known to the inventor. So in *Turner* v. *Winter*, 1 T. R. 602, *Buller*, J., said, "it was incumbent on the plaintiff to show that the things stated in the specification would answer. If he could only make the product with two or three of the ingredients specified, and had inserted others which would not answer; or if he made the article with cheaper ingredients than those enumerated, the patent is

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void, because the public is deceived, and has not the full benefit of his knowledge." See also, as to the necessity of explicit statement in the specification as to the process for which the patent is claimed, *Derosne* v. *Fairie,* 2 Cr. M. & R. 476.

Wood v. *Zimmer.*

In *Wood* v. *Zimmer,* Holt, 58, the specification was bad for concealment. The patent was for a mode of making verdigris; and the specification directed certain proportions of copper and oil of vitriol to be boiled for a certain time in a copper of a particular construction, and afterwards strained off and mixed with an alkali. The process was sufficient; but it was proved that in practice, and clandestinely, the inventor poured aquafortis into the copper, which hastened the process. *Gibbs,* C. J., said, "A man who applies for a patent, and proposes a mode of carrying on that invention in the most beneficial manner, must disclose the means of producing it in equal perfection and with as little expense and labour as it costs the inventor himself. That is the price he pays for his patent." So in *Walton* v. *Bateman, Cresswell,* J., laid down the general rule, that if a man knows a better mode of working his invention than is stated in his specification, the patent will be vitiated: see also *Tetley* v. *Easton,* Mair. P. C. 76; *Turner* v. *Winter,* 1 Web. P. C. 81; *Neilson* v. *Harford,* 1 Web. P. C. 321; *Heath* v. *Unwin,* 2 Web. P. C. 243.

Savory v. *Price.*

In *Savory* v. *Price,* 1 Ry. & M. 1, the objection assumed a somewhat different form. The patent was for a Seidlitz powder, composed of three known substances and articles of commerce, *Rochelle salts, carbonate of soda,* and *tartaric acid;* but instead of describing them as such, the specification gave recipes which would respectively produce those substances, and directed the results to be mixed in certain proportions to produce the Seidlitz powder. The patent was held bad. *Abbott,* C. J., said, "If a person, on reading the specification, would be led to suppose a laborious process necessary to the production of any one of the ingredients, when in fact he might go to a chemist's shop and buy the same

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thing ready made as a separate simple part of the compound, the public are misled."

Sturtz v. *De la Rue.*

In *Sturtz* v. *De la Rue*, 1 Web. P. C. 83, the specification directed the use of "the finest and purest chemical white lead." It was proved that no substance was known in commerce under that name, that the purest common white lead would not do, but that the substance used by the patentee was a foreign preparation of white lead imported by him, and which could only be procured at one colour-shop in London. Lord *Lyndhurst*, C., held, that the specification, not giving that full and precise information which the public had a right to require, was bad. It was a principle of patent law that there must be the utmost good faith in the specification.

The rule that the specification must give complete information respecting the use of the invention was carried to a great length in *Felton* v. *Greaves*, 3 Car. & P. 611, which was an action for the infringement of a patent for "a machine for an expeditious and correct mode of giving a fine edge to knives, razors, scissors, and other cutting instruments." It was proved that the machine, as described in the specification, would sharpen knives but not scissors, and the patent was accordingly held to be bad. See also *Bainbridge* v. *Wigley*, Holr. Pat. 122, where the specification, stating an improvement on the flageolet to be capable of producing new notes, when in fact only one new note was produced, was held bad.

Crompton v. *Ibbotson.*

Suggestion of a particular material, "or any suitable material," with a knowledge that there is no other suitable material.

In *Crompton* v. *Ibbotson*, Dan. & Ll. 3, the specification of an improved method of drying and finishing paper, directed the paper to be conducted by means of a cloth or cloths against a heated cylinder, "which cloth may be made of any suitable material, but I prefer it to be made of linen warp and woollen weft," which material it was proved the patentee knew, from repeated trials, was the only one which would succeed. It was held bad. Lord *Tenterden*, C.J., said, that other persons, misled by the terms of this specification, might be induced to make experiments which the patentee knew must fail, and the public therefore had not the full benefit of his invention and experience. But if there is no *mala*

fides in the invention, the case may be different: see *Bickford* v. *Skewes*, 10 B. & C. 27. In *Crossley* v. *Beverley*, 1 Web. P. C. 106, the specification for an improved gas apparatus stated that it was fit for making gas from any material that would yield it by heat. It was proved that it would not answer for making oil gas, which was a manufacture then thought not to be too expensive for use. An objection, that people might be put to trouble and expense in experiments, was overruled by Lord *Tenterden*, C.J.—"A man must have the spirit of prophecy if he knows that people will apply those things to the purpose for which they were not considered applicable at that time. It is a hard case to set aside the whole patent because there is some little matter in which it is not quite right." **Title and Specification.**

It is not, however, necessary for an applicant for a patent to set out in his specification every alternative mode of making, working, or applying his invention, provided he shows some of the best practical modes of so doing: see *Badische Anilin und Soda Fabrik* v. *Levenstein*, 24 Ch. D. at p. 168. Specification need not set out every mode of use, &c.

In *Neilson* v. *Harford*, 8 M. & W. 806; *S. C.*, 1 Web. P. C. 356; it was objected to the specification of an invention of an improved application of air to produce heat in furnaces that it was deceptive, by stating that the shape of a receptacle for air was immaterial to the effect, whereas it was shown that, by varying the shape, the effect was varied. The objection failed. *Parke*, B., said that in order to render a specification valid, it should be such as, if fairly followed out by a competent workman, without invention or addition, would produce the machine for which a patent is taken out, and that such machine so constructed must be one beneficial to the public. The question of construction is for the court, and the question as to the value of the invention is for the jury: *ibid.* *Neilson* v. *Harford.*

The words used with regard to a patent must be construed, like the words of any other instrument, in their natural sense, according to the general purport of the instrument: *Clark* v. *Adie* (No. 2),

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2 App. Ca. 423; see also *Harrison* v. *Anderston Foundry Co.*, 1 App. Ca. 581.

Sufficient if specification be intelligible on the whole.

The use of words not generally intelligible, or of foreign words, is not fatal, if the meaning, to persons having knowledge of the business, is not essentially obscured: *Derosne* v. *Fairie*, 1 Web. P. C. 157.

The specification will be construed with reference to the state of knowledge at the date it was delivered; and the applicant cannot claim to work out his process by the use of materials subsequently discovered: *Badische Anilin und Soda Fabrik Co.*, 24 Ch. D. 156.

Technical terms.

Where old and known ingredients or apparatus are to be used in the process of an invention, it will not be necessary to describe them particularly in the specification; it will be sufficient to describe them by the names by which they are commonly known in the particular business: *Crossley* v. *Beverley*, 9 B. & C. 63; 1 Web. P. C. 106; *Household Co.* v. *Neilson*, 1 Web. P. C. 676. Such names will be taken to be used in their ordinary commercial sense: *Simpson* v. *Holliday*, L. R. 1 H. L. 315.

Bloxam v. *Elsee*.

Foreign words.

In *Bloxam* v. *Elsee*, 1 Car. & P. 563, the invention was obtained from a Frenchman, and the specification contained several Gallicisms—such as *vice*, for a screw; *vice de pression, vice de reaction*, for adjusting screws; *chapitre*, for a cap; and some of the measures were given in *centimetres*, some in *pieds* and *pouces*. The witnesses proved that English mechanics would not understand these terms; but still the specification and drawings together were sufficient to enable them to make the machine. Per *Abbott*, C. J.—"An inventor is not tied down to make such a specification as by words only would enable a skilful mechanic to make the machine, but he is to be allowed to call in aid the drawings which he annexes to the specification; and if, by a comparison of the words and the drawings, the one will explain the other sufficiently to enable a skilful mechanic to perform the work, such a specification is sufficient."

The invention must be described in the specification in such terms and manner as will render

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it intelligible to a workman of ordinary experience and intelligence, and reasonably skilled in the particular trade, so as to enable him to produce the result described by merely following its directions, without the necessity of making experiments or additions or new inventions of his own: *R.* v. *Arkwright*, 1 Web. P. C. 66. The specification is addressed to persons in the trade having some skill in the subject, and if it is understood by such persons it is intelligible: *Arkwright* v. *Nightingale*, 1 Web. P. C. 61; see *Hornblower* v. *Boulton*, 8 T. R. 104; *Harmar* v. *Playne*, Dav. P. C. 318; *Neilson* v. *Harford*, 8 M. & W. 806; *S. C.*, 1 Web. P. C. 356. But "the specification ought to be so framed as not to call on a person to have recourse to more than these ordinary means of knowledge, not invention, which a workman of competent skill in his art and trade may be presumed to have: you may call upon him to exercise all the existing knowledge common to the trade, but you cannot call on him to exercise anything more; you have no right to tax his ingenuity or invention:" per *Alderson*, B., in *Morgan* v. *Seaward*, 1 Web. P. C. 170.

Drawings to accompany specification.

Drawings.]—Both provisional and complete specifications must, if required, be accompanied by drawings (*k*).

Of course, some inventions do not admit of illustration by drawings, and others are capable of being sufficiently explained without such illustration. But where machinery is the subject-matter of an invention, or connected therewith, it will be generally necessary that drawings should accompany the specification so as to indicate clearly the relation of the several parts of the mechanism, which, ex-

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Drawings.

(*k*) The Patent Rules, 1883, rr. 28—30, contain regulations as to the size and methods of preparing drawings accompanying provisional and complete specifications. And r. 31 directs that every applicant shall furnish an additional drawing, illustrative of the features of novelty constituting his invention, accompanied by a concise explanatory statement on foolscap paper legibly written or printed.

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cept in the simplest cases, cannot be well explained by a verbal description: see *Johnson,* Pat. Man. 117.

The drawings may be referred to in order to explain any ambiguity in description contained in the specification: see the observations of *Abbott,* C. J., in *Bloxam* v. *Elsee* (*supra*); and see *Hastings* v. *Brown,* 1 E. & B. 454; *Daw* v. *Eley,* L. R. 3 Eq. 500, n.; *S. C.,* 14 W. R. 126; *Poupard* v. *Fardell,* 18 W. R. 127; *Arnold* v. *Bradbury,* L. R. 6 Ch. A. 706. But drawings will not be allowed to be used to limit the claim in the specification so as to prevent a patent from being bad for want of novelty, if the necessary limitation is not mentioned in the specification: *Hinks* v. *Safety Lighting Co.,* 4 Ch. D. 607; see *Clark v. Adie,* 2 App. Ca. 315. On the other hand care must be taken that the applicant does not bind himself to the particular details of his drawing if such is not his intention. If the drawings only illustrate one out of several forms of the invention, attention should be expressly drawn in the specification to the point.

Suggestions as to Framing Specifications.]—Some general remarks on the mode of framing specifications may not be useless, although by far the best preparation for the task is an attentive study of the doctrines of the Courts, as expounded in the cases cited in the preceding pages.

Object of specification.

It has been seen that the object of the specification is to inform the public of the matters which it is prohibited from making or practising during the term, and to enable it to exercise the invention at the expiration of the term in the most advantageous manner; so that any concealment or misrepresentation on the part of the patentee in the specification will avoid the patent. The inventor should, therefore, bring to the preparation of this instrument the utmost sincerity and good faith, and endeavour to impart as much information respecting the practical working of his invention as he possesses or can obtain. Before delivering his complete specifica-

Duty of applicant to observe good faith in the specification.

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tion, he should make experiments, and endeavour to perfect his invention. The recent Act provides him with the opportunity of so doing, meanwhile affording him provisional protection for his invention. On making his application for a patent, he is in the first instance only required to deliver a provisional specification. He has nine months allowed to him from the date of his application to deliver a complete specification; and in the meantime his invention is protected. Though the applicant is only required to describe in his provisional specification the *nature* of his invention, he should be careful in his complete specification to see that the invention is particularly described, and that it is substantially the same as that described in the provisional specification.

Rules to be observed in framing specifications.

Besides communicating every information in the power of the patentee, the objects to be kept in view are,—first, to include nothing that has been previously published or used within the kingdom, or that does not fall within the title of the invention contained in the patent; next, to distinguish clearly between what are essential parts of the invention, and what are mere variations, so that nothing that is useless may be represented as essential; and lastly, to see that his claim is duly limited, and does not cover anything not invented by him. The recent Act renders the claim an essential part of the specification, and the framing of this part of the specification will require more care and attention than was formerly the case. It will no longer be sufficient to frame the claiming clauses by reference to the previous description contained in the specification, but the claiming clauses themselves must be so worded as to define clearly what is claimed. An extensive acquaintance with the history and present condition of the manufactures allied to that which is the subject of the patent, and a careful search in the registers of patents (where many inventions slumber that never become "publicly known," otherwise than in the legal sense of the phrase), are essential in most cases, to protect the inventor from claiming more

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than he can legally appropriate; and no amount of knowledge or precaution can give him complete security in this respect.

Principle should be clearly evolved.

The subject-matter of almost every patent that is available in practice, being, as has been seen, a principle of more or less generality, whether latent or recognised by the inventor, the importance of evolving and obtaining a distinct apprehension of the principle is evident. Without doing so, the patentee cannot give a clear account of his invention: nor can he, on the one hand, secure to himself the full benefit of it; nor, on the other, with any certainty avoid defeating his patent by including too much. A knowledge of manufactures and science will here be of material service to the draftsman, and may enable him, by judicious inquiries and suggestions, to bring the invention to a more definite shape than it has previously assumed in the inventor's mind,—to develop with precision its principle or essence, and the substantial differences which separate it from all known contrivances,—and thus to secure the validity of the patent, and extend its scope to the utmost limits that are consistent with safety.

Division of specification into parts.

The four principal points are then,—1st, to give a clear account of the invention, and the mode of practising it; 2nd, to state the principle, if it be known; 3rd, to state the various practical means of applying it; and, 4th, to indicate clearly in the claiming clauses what is the invention claimed.

The statement.

The first part of the specification will contain a statement shortly setting forth the previous history and state of the manufacture, if necessary for the proper comprehension of the improvement, and defining the nature of the improvement, and the principle on which it depends.

The applicant should say, "My improvement consists in this," describing it by words if he can, or if not, by reference to figures: per Lord *Ellenborough* in *Macfarlane* v. *Price*, 1 Web. P. C. 74. "Every party is bound to tell the public clearly by his specification what he claims and what they may do or not do without risk of an action for infringing

his patent:" per *Cresswell*, J., in *Gibson* v. *Brand*, 1 Web. P. C. 640. Title and Specification.

If the application is for a second patent in respect of improvements of an invention for which the applicant has already obtained a patent, the specification should clearly define the improvements which distinguish the later from the original invention: *Eades* v. *Starbuck Waggon Co.*, W. N. 1881, p. 160. So also if a patent is sought for a new combination of old and well-known parts, the specification must clearly show that the invention is for the combination and not for the parts: see *Parkes* v. *Stephens*, L. R. 8 Ch. A. 8 Eq. 365; *Harrison* v. *Anderston Foundry Co.*, 1 App. Ca. 578.

The various modes of applying the principle to practice will then be explained in the fullest detail; and in this division will be included every process or contrivance that is useful in the manufacture, and would not be at once understood by every person conversant with the subject,—although such process or contrivance is not new, or intended to be claimed. If this descriptive part of the specification is properly worded, it will not amount to a claim of anything contained in it; and even if it does appear to include a claim that cannot be supported, this defect may be cured by the claiming clauses in the subsequent part of the instrument.

Nature, &c., of information to be given.

The question of the nature and amount of information required to be given by the specification has been already considered at some length. The principal points to be borne in mind will be here briefly recapitulated.

The statement must set out fairly and fully what the invention is, and should contain a full description of the precise way in which it is to be worked; if it cannot be completely worked by following the specification, there can be no infringement of the patent: see *Morgan* v. *Seaward*, 1 Web. P. C. 170. The description must not be couched in vague and general terms: see *Booth* v. *Kennard*, 2 H. & N. 84; but it must contain a precise and detailed description of all materials and ingredients: see *Muntz* v. *Foster*, 2 Web. P. C. 109; *Stevens* v. *Keating*, 2 Web. P. C.

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194; *Hills* v. *London Gas Light Co.*, 5 H. & N. 312; *Bailey* v. *Robertson*, 3 App. Ca. 1055; *Wegmann* v. *Corcoran*, 13 Ch. D. 63. Care must be taken not to omit from the specification anything which is essential to the efficient operation of the invention as regards either (i.) materials: *Mackelean* v. *Rennie*, 13 C. B. N. S. 52; (ii.) process: *Liardet* v. *Johnson*, 1 Web. P. C. 53: *R.* v. *Arkwright*, 1 Web. P. C. 70; *Neilson* v. *Harford*, 1 Web. P. C. 317; *Hinks* v. *Safety Lighting Co.*, 4 Ch. D. 607; (iii.) proportion and adjustment of ingredients or parts: *James' Case*, 1 Web. P. C. 54, n.; *Morgan* v. *Seaward*, 1 Web. P. C. 182; and (iv.) mode of application: *Bailey* v. *Robertson*, 3 App. Ca. 1055.

The applicant must fairly communicate to the public the best mode of working his invention which is known to himself: *Turner* v. *Winter*, 1 T. R. 602; *Walter* v. *Bateman*, Maw. P. C. 76. But he need not set out all the alternative modes of working it: *Neilson* v. *Harford*, 8 M. & W. 806; *S. C.*, 1 Web. P. C. 356.

The specification will be construed according to the state of knowledge at the time of delivery: *Badische Anilin und Soda Fabrik* v. *Levinstein*, 24 Ch. D. 156. Old ingredients or apparatus to be used in the process of the invention will be sufficiently described by the names by which they are commonly known in the particular business: *Crossley* v. *Beverley*, 3 Car. & P. 513; *Household Co.* v. *Neilson*, 1 Web. P. C. 676; see *Simpson* v. *Holliday*, L. R. 1 H. L. 315.

Lastly, the information given by the specification must be capable of being understood by workmen of ordinary skill and experience: *R.* v. *Arkwright*, 1 Web. P. C. 61; *Hornblower* v. *Boulton*, 8 T. R. 104; *Neilson* v. *Harford*, 1 Web. P. C. 314; *Plimpton* v. *Malcolmson*, 3 Ch. D. 568.

The claim.

The practice had grown up for some time past, previously to the passing of the Patent Act, 1883, for patentees to conclude their specifications by the insertion of claiming clauses. Such clauses were not, however, required by law as a necessary part of the specification, and they were frequently in very short

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terms, by reference to the antecedent description of the invention in the statement or body of the specification (*l*). The present Act, however, prescribes that a complete specification must end with a *distinct statement* of the invention claimed. The claim is thus now an essential part of every complete specification. In framing the claiming clauses care must be taken to claim neither too little nor too much. If the claim omits to specify distinctly any part of his invention, or any particular mode of applying it, the patent will be restricted to the parts or modes of application actually claimed; in such a case, the patentee will be held to have impliedly disclaimed everything which was not distinctly claimed: *Harrison* v. *Anderston Foundry Co.*, 1 App. Ca. 574; see *Clark* v. *Adie*, 2 App. Ca. 315; *Hinks* v. *Safety Lighting Co.*, 4 Ch. D. 607. "The real object of what is called a claim is not to claim anything which is not mentioned in the specification but to disclaim something. A man who has invented something gives in detail the whole of the machine in his specification. In doing that, he is of necessity very frequently obliged to give details of things which are perfectly known and in common use—he describes new combinations of old things to produce a new result or something of that kind. Therefore, having described his invention, and the mode of carrying that invention into effect, by way of security, he says: 'But take notice, I do not claim the whole of that *modus operandi*, but that which is new and that which I claim is that which I am now about to state:'" per *James*, L. J., in *Plimpton* v. *Spiller*, 6 Ch. D. at p. 426.

On the other hand, if the claim is too large, so as to claim something which is not new, though the specification may be amended subsequently by way of disclaimer, &c. (*post*, p. 648); yet the excessive claim

(*l*) So in *Arnold* v. *Bradbury*, L. R. 6 Ch. D. 706, a patentee of an invention for carrying out a process by machinery, which had hitherto been carried out by manual labour, having particularly described the machinery in the statement, simply claimed to carry out the process "by machinery;" and it was held that the claim was sufficiently distinct.

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will preclude the patentee from restraining infringement of his patent, until he has disclaimed the part which ought not to have been claimed: *Bramah* v. *Hardcastle*, 1 Carp. P. C. 168; *Hill* v. *Thompson*, 1 Web. P. C. 249; *Brunton* v. *Hawkes*, 4 B. & Al. 541; *Templeton* v. *Macfarlane*, 1 H. L. C. 595; *Jordan* v. *Moore*, L. R. 1 C. P. 624; *Rushton* v. *Crawley*, L. R. 10 Eq. 522.

Compulsory amendment of specification.

Amendment of Specification.]—The Act of 1883, sect. 7, provides that "if the examiner reports that the nature of the invention is not fairly described, or that the application and the specification, whether provisional or complete, or drawings left therewith, have not been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject-matter of the invention," the comptroller may require the application, specification, or drawings, to be amended, subject, however, to the applicant's right to appeal against such requirement to the law officer. Sect. 9 contains a similar provision with regard to cases where a complete specification is left after a provisional specification, and the examiner reports that the complete specification is not prepared in the prescribed manner, or that the invention particularly described in the complete specification is not substantially the same as that described in the provisional specification.

By sect. 94 of the Act it is enacted that—

Exercise of discretionary power by comptroller.

'Where any discretionary power is by this Act given to the comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a trade-mark or design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent."

Voluntary amendment of specification.

The Act of 1883 contains the following enactments, empowering the applicant or patentee voluntarily to amend the specification:—

Sect. 18. "(1.) An applicant or a patentee may, from time to time, by request in writing left at the patent office, seek leave to amend his specification, including drawings forming part thereof,

by way of disclaimer, correction, or explanation, stating the nature of such amendment and his reasons for the same. Title and Specification.

"(2.) The request and the nature of such proposed amendment shall be advertised in the prescribed manner, and at any time within one month from its first advertisement any person may give notice at the patent office of opposition to the amendment.

"(3.) Where such notice is given the comptroller shall give notice of the opposition to the person making the request, and shall hear and decide the case subject to an appeal to the law officer.

"(4.) The law officer shall, if required, hear the person making the request and the person so giving notice, and being in the opinion of the law officer entitled to be heard in opposition to the request, and shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

"(5.) Where no notice of opposition is given, or the person so giving notice does not appear, the comptroller shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

"(6.) When leave to amend is refused by the comptroller, the person making the request may appeal from his decision to the law officer.

"(7.) The law officer shall, if required, hear the person making the request and the comptroller, and may make an order determining whether, and subject to what conditions, if any, the amendment ought to be allowed.

"(8.) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before amendment.

"(9.) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall in all courts and for all purposes be deemed to form part of the specification.

"(10.) The foregoing provisions of this section do not apply when and so long as any action for infringement or other legal proceeding in relation to a patent is pending."

Sect. 19. "(1.) In an action for infringement of a patent, and in a proceeding for revocation of a patent, the Court or a judge may at any time order that the patentee shall, subject to such terms as to costs and otherwise as the Court or a judge may impose, be at liberty to apply at the patent office for leave to amend his specification by way of disclaimer, and may direct Power to disclaim part of invention during action, &c.

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that in the meantime the trial or hearing of the action shall be postponed."

Restriction on recovery of damages.

Sect. 20. "Where an amendment by way of disclaimer, correction, or explanation has been allowed under this Act, no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge."

Advertisement.

Sect. 21. "Every amendment of a specification shall be advertised in the prescribed manner."

Amendment of clerical errors.

Mere clerical errors in a specification could always be amended under an order of the Master of the Rolls: see *Re Sharp's Patent*, 1 Web. P. C. 645; *Re Johnson's Patent*, 5 Ch. D. 503. And this jurisdiction is not affected by the present Act: *Re Gare's Patent*, 26 Ch. D. 105. An application for amendment of clerical errors should be made without delay: see *Re Blamond's Patent*, 3 L. T. (N. S.) 800.

Omission of drawings.

In *Re Pullam's Patent* (May, 1878), cited in Johnson's "Patentee's Manual" at p. 118, an application to correct a specification by addition of drawings alleged to have been omitted by inadvertence, but not described in the specification, was refused.

Disclaimer.

The power of amendment by way of correction or explanation is new. Under former Acts (except in the case of clerical errors, *supra*) the specification could only be amended by disclaimer, *i.e.*, by way of rejection or reduction of claims made by the specification: see *Ralston* v. *Smith*, 11 H. L. C. 245; *Foxwell* v. *Bostock*, 4 De G. F. & J. 298; except where explanation was necessary by reason of the disclaimer to render the specification, as amended, intelligible: see *Thomas* v. *Welch*, L. R. 1 C. P. 192.

The reasons for a disclaimer are not part of the disclaimer, and accordingly are not available for the purpose of the construction of the amended specification: *per* Lord *Westbury*, in *Cannington* v. *Nuttall*, L. R. 5 H. L. at p. 227.

4. Assignments of Letters Patent, and Licences to Use the Invention.

A PATENT right is a personal chattel, which, by the terms of the grant, may be assigned, and, on the death of a patentee, goes to the executors (*m*) or administrators, 2 Bl. Com. 407, Will. Ex., Vol. I., p. 824. Lord *Eldon*, C., in *Ex parte Granger*, cit. "Godson on Patents," 225, seems to have thought that the right is within the doctrine of reputed ownership; and see "Robson on Bankruptcy," 549; and it seems is liable to be sold under a *fieri facias*, Tidd, Pr. 9th ed. 1001. The trustees in bankruptcy of a patentee in all repects represent the bankrupt as to the patent, and may sue in respect of any infringement thereof, being only accountable to the creditors for the proceeds of the sale of the patent: *Bloxam* v. *Elsee*, 6 B. & C. 169; *S. C.*, 9 D. & Ry. 215. See also *Hesse* v. *Stevenson*, 3 B. & P. 577.

Patent right a personal chattel.

With regard to assignment of patents the Act of 1883 enacts:—

Sect. 36. "A patentee may assign his patent for any place in or part of the United Kingdom, or Isle of Man, as effectually as if the patent was originally granted to extend to that place or part only."

Assignment for particular places.

Sect. 87. "Where a person becomes entitled, by assignment, transmission, or other operation of law, to a patent, or to the copyright in a registered design, or to a registered trade-mark, the comptroller shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade-mark, in the register of patents, designs, or trade-marks, as the case may be. The person for the time being entered in the register of patents, designs, or trade-marks, as proprietor of a patent, copyright in a design or trade-mark as the case may be, shall, subject to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the same, and to give effectual

Entry of assignments and transmissions in registers.

(*m*) The probate of the will must be registered at the Patent Office. As to the effect of assignment of a patent by executors before registration of probate: see *Elwood* v. *Christie*, 17 C. B. (N. S.) 754.

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receipts for any consideration for such assignment, licence, or dealing. Provided that any equities in respect of such patent, design, or trade-mark may be enforced in like manner as in respect of any other personal property."

The right of an inventor to assign the patent granted to him is recognised by the form of patent given in the First Schedule to the Act, see *ante*, p. 610, note (*g*). The assignment may be either absolute, or by way of mortgage, and either of the whole of the patent, or of a distinct part thereof: *Dunnicliff* v. *Mallett*, 7 C. B. (N. S.) 209; or of an undivided share therein: *Walton* v. *Lavater*, 8 C. B. (N. S.) 162.

Licence to use patent.

So also a patentee may grant licences whereby the licensee will acquire merely a right or permission to use the patent in accordance with the terms of the licence, and not, as in the case of an assignee, the legal estate and interest in the patent: *Walton* v. *Lavater*, 8 C. B. (N. S.) 162.

Assignment by co-owners.

One of several co-owners of a patent may assign his share. "In the use of a patent, belonging to several persons in common, each co-owner can assign his share and sue for an infringement (*n*), and can also work the patent himself and give licences to work it; and it is now settled that he is entitled to retain for his own benefit whatever profit he may derive from the working, although it is perhaps still open to question whether he is not liable to account for what he receives in respect of the licences:" "Lindley on Partnership," Vol. I., p. 68. See *Re Russell's Patent*, 2 De G. & J. 130; *Mathers* v. *Green*, L. R. 1 Ch. 29; *Sheehan* v. *Great Eastern Rail. Co.*, 16 Ch. D. 59. One of several co-owners of a patent cannot assign more than his share: *Re Horsley and Knighton's Patent*, L. R. 8 Eq. 475. Where a partnership was formed for the purpose of working an invention patented by one of the partners, it was held that the patent became part of the

(*n*) One co-owner suing for recovery of profits due for the use of the patent need not make his co-owners parties: *Sheehan* v. *Great Eastern Rail. Co.*, 16 Ch. D. 59.

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assets of the partnership and that neither partner could assign without the concurrence of the other, but that each partner acquired a licence to work the invention, and could work it accordingly on his own account on dissolution of the partnership: *Keany's Button-holing Co.* v. *Somerville,* 26 W. R. 787.

Liability to account.

With regard to accounting for profits of licences where a patentee has assigned a share of the profits, it has been recently decided that the assignee is entitled to an account from the licensee, but must make the assignor, and other parties interested parties, and must place himself in the position of the assignor by offering to pay any monies which may be due from the assignor to the accounting licensee: *Bergmann* v. *Macmillan,* 17 Ch. D. 427.

Deed, whether necessary to assignment.

An assignment of a patent must be by deed, being a grant of an incorporeal right: Co. Lit. 9 C. But an executory agreement, not under seal, for the assignment of a patent is enforceable in equity: *Lewin* v. *Brown,* 14 W. R. 640; see also *Smith* v. *Buckingham,* 18 W. R. 314. An agreement by the vendor of a patent to assign to the purchaser all future patent rights which he might thereafter acquire of a like nature to the patent sold is not contrary to public policy: *Printing, &c., Co.* v. *Sampson,* L. R. 19 Eq. 462.

Warranty of title.

It is also advisable that a contract for the sale of a patent should contain an express warranty of the vendor's title; for, in the absence of fraud, it is no defence to an action to enforce such a contract to plead that the invention was neither new nor useful, and that the patent accordingly could not be sustained: *Hall* v. *Conder,* 2 C. B. (N. S.) 22; *Smith* v. *Scott,* 6 C. B. (N. S.) 771. It may also be advisable to bind the vendor by covenant not to apply for leave to amend his specification or drawings without the written consent of the purchaser.

Search.

An intending purchaser of a patent should be careful to cause search to be made at the Patent Office with regard to the novelty of the invention.

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Registration.

A body corporate may be registered as proprietor by its corporate name: Rule 70. A request in writing for registration of an assignment should be left at the Patent Office, addressed to the comptroller, without delay (see Rule 65), as the assignee cannot maintain an action for infringement of his patent until his assignment has been registered.

Compulsory licences.

The Act of 1883 contains the following new enactment, empowering the Board of Trade to compel a patentee to issue licences :—

Power for Board to order grant of licences.

Sect. 22. "If on the petition of any person interested it is proved to the Board of Trade that by reason of the default of a patentee to grant licences on reasonable terms—

(*a.*) The patent is not being worked in the United Kingdom; or

(*b.*) The reasonable requirements of the public with respect to to the invention cannot be supplied; or

(*c.*) Any person is prevented from working or using to the best advantage an invention of which he is possessed,

the Board may order the patentee to grant licences on such terms as to the amount of royalties, security for payment, or otherwise, as the Board, having regard to the nature of the invention and the circumstances of the case, may deem just, and any such order may be enforced by mandamus."

The procedure on petitions for compulsory licences is regulated by rules 57—63 of the Patent Rules, 1883. It may be observed that neither in the Act nor in the Rules is contained any provision as to costs of these proceedings, nor as to any appeal from the decision of the Board of Trade.

Voluntary licences.

A power to grant licences is given by implication to the patentee by the terms of the patent.

Distinction between assignment and licence.

A licence does not, like an assignment, pass the whole interest of the patentee, but merely confers on the licensee a right or liberty to use the patent for the whole or for a portion of the term, and that either generally throughout the United Kingdom and the Isle of Man, or within the limits of a particular district.

General and exclusive licences.

A licence may be either general, so as merely to authorise the licensee to use the patent in common with other persons, or exclusive so as to bind the

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licensor not to empower other persons to use the patent during the continuance of and within the limits mentioned in the licence.

Licence to manufacture authorises sale.

A licence to manufacture an article necessarily implies an authority for the licensee to sell the same when manufatured pursuant to the licence, without interference by the patentee: *Thomas* v. *Hunt*, 17 C. B. (N. S.) 183.

Form of licence.

A licence is now required by the form of patent given in the schedule to the Act of 1883 (Form D., see *ante*, p. 610, note (*g*)) to be in writing under the hand and seal of the patentee (*o*).

Estoppel.

Where it is desired to prevent the licensee from questioning the validity of the patent or the sufficiency of the specification, this should be done by means either of recitals affirming such validity and sufficiency or by covenants precluding the licensee from disputing the same.

Effect of recitals when the patent fails.

Oldham v. *Langmead.*

The effect of recitals in a deed by way of estoppel where the patent turns out to be invalid, is not very clearly settled by the cases. In *Oldham* v. *Langmead*, cit. 3 T. R. 439, where the action was brought by the assignee of a patent against the patentee, Lord *Kenyon* would not permit the latter to show against his own deed that it was not a new invention. But where the plaintiffs by articles of agreement, reciting that they were the assignees of T. T., of a patent for an engine to be used with a stocking-frame, covenanted that the defendant should during the term of the letters patent use one stocking-frame with their patent machine thereto, and the defendant covenanted that during the term of the letters patent he would not use any of the patent engines besides that one, it was held that he was not estopped in an action for breach of this

Hague v. *Maltby.*

(*o*) Under the old law a simple licence to use a patent might have been granted by an instrument not under seal: *Chanter* v. *Johnson*, 14 M. & W. 408. And where persons having obtained a licence not under seal, used the patent, they could not deny the validity of their licence, and that payment of the royalties reserved thereby might be enforced: *Chanter* v. *Dewhurst*, 12 M. & W. 823.

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covenant, from showing that the patent had become void by non-enrolment of the specification in time. *Hague* v. *Maltby*, 3 T. R. 438. In the more recent case of *Bowman* v. *Taylor*, 2 A. & E. 278, where a licence to the defendants to use a machine was granted by indenture, reciting that the plaintiff had invented the machine, and obtained letters patent, and had enrolled the specification, it was held that the defendants could not plead in an action on the covenants entered into by them, that the grantor was not the first or true inventor; or that no specification had been enrolled. "Estoppels," said *Patteson*, J., "are mutual." Fraud was not pleaded. *Hague* v. *Maltby* was distinguished on the ground that the deed in that case did not recite the fact pleaded in defence, but only that the grantor was assignee of the patent.

Bowman v. *Taylor.*

Clark v. *Adie.*

In *Clark* v. *Adie* (No. 2), 2 App. Ca. 423, it was held that, though it is not competent for a licensee to dispute in any way the validity of his licensor's patent during the continuance of the licence, still it is competent for the licensee to show that articles manufactured by him, in respect of which royalties are claimed under the patent, are not covered by the specification as property construed. Lord *Blackburn*, in that case, said that the position of a licensee is very analogous to the position of a lessee of land, who during the continuance of the lease is estopped from denying his lessor's title, but who is at liberty to show that a parcel of land in dispute was never comprised in the lease: *ibid*, at p. 435. See also as to estoppel with regard to patents: *Cropper* v. *Smith* (No. 2), 26 Ch. D. 700. As to the mode of taking advantage of the estoppel, see *Bowman* v. *Rostrow*, 4 Nev. & M. 551.

Chanter v. *Leese.*

In *Chanter* v. *Leese*, 4 M. & W. 295, the licence was by agreement not under seal; and it recited merely that the grantor had obtained patents for the subject-matters of the licence. A plea by the licensee to an action to enforce his part of the contract, that the improvement comprised in one of the patents was not at the time of the grant of the patent a new invention as to the public use thereof

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in England, as the plaintiff at the time of making the agreement well knew, was held, on demurrer, to be a bar to the action.

Licensee cannot recover consideration because patent proves to be bad.

Where a licence was granted in consideration of an annuity secured by bond, which was paid for several years, and it was then discovered that the invention had been in public use before the patent (though the fact was unknown to the patentee when he granted the licence), it was held that the licensee could not recover back the money he had paid on account of the said annuity in an action for money had and received. Sir J. *Mansfield* said that the parties were equally innocent, and it did not appear that the plaintiff had not made considerable advantage of the invention before the right was questioned, and which he would never have thought of exercising, but for the licence. They might be considered in some measure as partners in the profits. *Taylor* v. *Hare*, 1 B. & P. N. R. 260.

Lovell v. *Hicks*.

Money ordered to be paid back on the ground of fraud.

In *Lovell* v. *Hicks*, 2 Y. & C. 46, an agreement for the purchase of a licence to use a patent which turned out to be a mere bubble, was set aside, and money paid under the agreement was ordered to be refunded. The invention proved to be useless for the purpose pretended, and the licensee was deceived by fraudulent experiments. The co-adventurers with the patentee were held answerable as partners to the plaintiff for the losses occasioned to him by the copartner's fraud: *S. C.*, 2 Y. & C. 487. See *Hall* v. *Jarvis*, 1 Web. P. C. 103.

Consideration.

The consideration for the grant of a licence may be a gross sum paid on execution of the licence, or a fixed periodical payment, or a royalty dependent upon the use made of the invention, or the profits made by its sale.

Licensees' covenants.

A licence will generally contain a covenant by the licensee to pay the rents or royalties reserved thereby; and if the consideration is variable and dependent on the amount of sales or profits, he should also covenant to furnish accounts, produce books and vouchers, and to allow the licensor to inspect the same, as also the stock, machinery, &c. It may also be advisable sometimes to insert an

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express covenant by the licensee not to dispute the validity of the patent, or the sufficiency of the specification, as recitals merely operate by way of estoppel up to the time of the execution of the deed.

Power to assign licence.

If it is intended that the licensee is to be at liberty to assign his licence, an express power in that behalf must be given to him; as otherwise the licence is not assignable: see *Bowen* v. *Hodges*, 22 L. J. C. P. 198.

Licensor's covenants.

The licensor will generally enter into the usual qualified covenants that the patent is good, and that he has the right to grant the licence.

Power of revocation.

A power will generally be reserved to the grantor to revoke the licence on nonpayment of the rents or royalties, or breach of covenant by a licensee.

5. Infringement of Patent Rights.

Colourable variation no excuse.

What constitutes Infringement of a Patent.]—A small or colourable variation will not authorize a third person to exercise in substance the patentee's invention: *Gibbs* v. *Cole*, 3 P. Wms. 254; *Hill* v. *Thompson*, 2 Moo., 424; *Dudgeon* v. *Thompson*, 3 App. Ca. 44. So where a patentee has discovered and applied a new principle, and has properly claimed it by his specification, he can maintain an action against a person who employs his principle in a different manner from any of those stated in the specification. As, where Forsyth invented the use of detonating powder for discharging fire-arms, he succeeded in an action for an infringement by using a lock of a different construction from those mentioned in the specification; in place of bringing the hammer to the anvil, the anvil was brought to the hammer: *Forsyth* v. *Riviere*, 1 Web. P. C. 97, 128. See *Crossley* v. *Beverley*, Id. 106; *Jones* v. *Pearce*, Id. 124; *Minter* v. *Wells*, Id. 127, 133; *Murray* v. *Clayton*, L. R. 7 Ch. 585; *Thorn* v. *Worthing Skating Rink Co.*, 6 Ch. D. 415, n.; *Adair* v. *Young*, L. R. 12 Ch. 21; *Bailey* v. *Robertson*, 3 App. Ca. 1055.

Infringement of a patent for a principle.

Evasion.

A patent cannot be evaded by taking the steps of a process in a different order, or transposing the

action of different parts of a machine: *Barber* v. *Grace*, 1 Exch. 339: see *Murray* v. *Clayton*, L. R. 7 Ch. 570. Infringement of Patent.

As to what will amount to an infringement of a patent for a combination of materials, all or some of which are old, there have been numerous decisions. The principles established by these decisions are too complicated to be stated concisely, or to be examined in detail in the present work. Reference may be made on this question to to the following cases: *Lister* v. *Leather*, 8 E. & B. 1004, 1032; *Bovill* v. *Keyworth*, 7 E. & B. 725; *Newton* v. *Grand Junction Rail. Co.*, 5 Exch. 334; *Smith* v. *London and North Western Rail. Co.*, 2 E. & B. 69; *Sellers* v. *Dickenson*, 5 Exch. 312; *Harrison* v. *Anderston Foundry Co.*, 1 App. Ca. 574; *Clark* v. *Adie*, 2 App. Ca. 335; *United Telephone Co.* v. *Harrison*, 21 Ch. D. 720. As to the infringement of patents for chemical processes or products by the substitution of equivalents, see *Russell* v. *Cowley*, 1 Web. P. C. 463; *Stevens* v. *Keating*, 2 Web. P. C. 181; *Heath* v. *Unwin*, Ibid. 227; *Talbot* v. *Laroche*, 15 C. B. 310; *Parker* v. *Stevens*, L. R. 8 Eq. 358; *Badishe Anilin und Soda Fabrik* v. *Levenstein*, 24 Ch. D. 156. Combinations.

A patent may be infringed by manufacture of the patented article, or by its sale, or by its user. How a patent may be infringed.

The manufacture of an article, or working of a process which has been patented, for the purposes of amusement or experiment, or mere private use and enjoyment, and not for profit, will not be an infringement of the patent: *Jones* v. *Pearce*, 1 Web. P. C. 125; *Higgs* v. *Goodwin*, E. B. & E. 529; *Frearson* v. *Loe*, 9 Ch. D. 48. But the manufacture or working will be an infringement, if made with a view to sale or user for profit, whether or not such sale or user has been actually effected or attempted: *Muntz* v. *Foster*, 2 Web. P. C. 101; *Oxley* v. *Holden*, 8 C. B. (N. S.) 666. By manufacture.

Mere possession (if there is no evidence of actual or intended user) is not an infringment of patent, even though a sale may have been attempted, if it has not actually been effected: *Minter* v. *Williams*, By sale.

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1 Web. P. C. 135. The sale of known chemical substances, with a view to their being used in the infringement of a patent, is no ground for an action for infringement against the vendor: *Sykes* v. *Howarth*, 12 Ch. D. 826. But it would seem that the sale of component parts of a patented machine, in such a way that they would be easily adjusted so as to form the complete machine, would be an infringement: *United Telephone Co.* v. *Dale*, 29 Ch. D. 778. The sale in England of an article manufactured abroad by a patented process, without the patentee's licence, is an infringement of patent: *Elmslie* v. *Boursier*, L. R. 9 Eq. 217. But if a patentee sells his article abroad, any person who purchases it from him is entitled, in the absence of agreement to the contrary, to import it and sell it in England: *Betts* v. *Willmott*, L. R. 6 Ch. 239; *Société Anonyme* v. *Telghman, &c., Co.*, 25 Ch. D. 1.

By user.

Possession of a patented article may amount to infringement, if it be shown that user was intended, although there may not have been any actual user: *Adair* v. *Young*, 12 Ch. D. 13. The user in this country of a patented article made abroad, will amount to an infringement of patent: *Neilson* v. *Betts*, L. R. 5 H. L. 1; see also *Nobels Explosive Co.* v. *Jones, Scott & Co.* 17 Ch. D. 721. User of a patented article for purposes of experiment and instruction, is user for advantage, and consequently an infringement of patent: *United Telephone Co.* v. *Sharples*, 29 Ch. D. 164.

Ignorance of existence of patent is no defence.

It may be remarked that it is no defence to an action for infringement to show that the infringer was ignorant of the existence of the patent: *Walton* v. *Lavator*, 29 L. J. C. P. 275; *Curtis* v. *Platt*, 11 L. T. (N. S.) 245. And the intention to infringe is immaterial one way or the other; the question is solely whether or not the patent has been in fact infringed. "The question of infringement depends not on what the defendant intends, but what he does:" per *Wilde*, C. J., in *Stead* v. *Anderson*, 2 Web. P. C. 156; see also *Stevens* v. *Keating*, 1 Mac. & G. 659; *Newell* v. *Elliott*, 10 Jur. (N. S.) 954.

Infringement of Patent.

Injunction when granted before the title is established at law.

Remedy by Injunction.]—The old rule in equity seems to have been to refuse to grant an injunction against an infringement of a patent until the patentee had established his title at law: *Anon.*, 1 Vern. 120; *East India Co.* v. *Skinner*, Id. 129; *Hills* v. *University of Oxford*, Id. 275; *Whitchurch* v. *Hide*, 2 Atk. 391; 4 Burr. 2400. However, this is not now essentially necessary, the record being *primâ facie* evidence of title: *Hicks* v. *Raincock*, Dick. 647; *Anon.*, 1 Ves. sen. 476; *Boulton* v. *Bull*, 3 Ves. jun. 140 (where the action which was directed to be brought having failed to determine the question, Lord *Rosslyn* continued the injunction, that another action might be brought): *Hill* v. *Thompson*, 3 Meriv. 622. "In the case of patent rights, if the party gets his patent, and puts his invention in execution, and has proceeded to a sale that may be called possession under it, however doubtful it may be whether the patent can be sustained, this Court has lately said, possession under a colour of title is ground enough to enjoin, and to continue the injunction till it shall be proved at law, that it is only colour, and not real title:" *per* Lord *Eldon*, C., *Universities of Oxford and Cambridge* v. *Richardson*, 6 Ves. 707; see *Gardner* v. *Broadbent*, 2 Jur. (N. S.) 1041. Even when there is considerable doubt as to the validity of the patent (as when the patent, being in substance for improvements, appeared to include the old machine), if the privilege has been exercised without disturbance for a considerable time an interim injunction will be granted: *Harmer* v. *Plane*, 14 Ves. 130; *Betts* v. *Menzies*, 3 Jur. (N. S.) 357; *Dudgeon* v. *Thompson*, 22 W. R. 464. But the injunction will not be made perpetual unless the legal validity of the patent is conclusively established at the trial: *Hills* v. *Evans*, 4 De G. F. & J. 288.

But where there is nothing to raise a presumption in favour of the patent, as where it has been only recently granted, or recently put into operation, and its validity is disputed, satisfactory *primâ facie* evidence of such validity should be adduced to support an application even for an interim injunction: *Gardner*

Infringement of Patent.

v. *Broadhurst*, 2 Jur. (N. S.) 1041; *Davenport* v. *Jepson*, 1 N. R. 73.

Original inventor may maintain action.

Who may maintain Action for Infringement.]—The original inventor, provided he has not parted with his whole interest in the patent, may maintain an action in respect of its infringement.

Assignee.

So also may the assignee of a patent: *Electric Telegraph Co.* v. *Brett*, 10 C. B. And that whether he has acquired the whole interest in the patent from one vendor, or by purchasing several parts or shares from several vendors: *Walton* v. *Lavatro*, 8 C. B. (N. S.) 162.

Assignee of part.

The assignee of a part of a patent may bring a separate action for the infringement of that part, without joining as parties the persons entitled to the other parts: *Dannicliff* v. *Mallett*, 7 C. B. (N. S.) 209; see also *Sheeham* v. *Great Eastern Rail. Co.*, 16 Ch. D. 59.

Where an assignment is limited to a particular district, the assignee can, of course, sue only in respect of infringements within that district.

Survivor of joint assignees.

The survivor of two joint assignees may sue in respect of infringements committed during the life of his co-assignee: *Smith* v. *London and North Western Rail. Co.*, 2 E. & B. 69.

Licensee.

It has been held that a licensee cannot maintain an action in his own name for infringement of a patent: *Deroom* v. *Fairie*, 1 Web. P. C. 155; but, if he holds under an exclusive licence (see *ante*, p. 654), he is entitled to use the name of the grantor in an application for an injunction to restrain infringement: *Renard* v. *Levinstein*, 2 H. & M. 632. The grantor is, however, in that case entitled to require to be indemnified against costs: *Evans* v. *Rees*, 2 Q. B. 334.

Proceedings in respect of infringement of a patent cannot be instituted until the complete specification has been accepted: see sect. 15 of the Patents, &c., Act, 1883.

Defendants to action for infringement.

Against whom Actions for Infringement may be brought.]—Any person who has infringed a patent may be made defendant to an action in respect of

Infringement of Patent.

the infringement. But such an action may be brought against a master employer or principal without making his servants, workmen, or agents, for whose acts he is responsible, defendants: *Betts* v. *Neilson*, 6 N. R. 221; *Adair* v. *Young*, 19. So the directors of a company are personally liable for infringement of a patent by the servants of the company: *Betts* v. *De Vitre*, L. R. 6 Ch. 442. An agent, however, may be sued for infringement, for it is no defence to say that he acted by order of his principal: *Gibson* v. *Brand*, 4 Mac. & G. 179. So a contractor will be liable for the infringement of the patent by workmen employed by him to carry out the work: *Sykes* v. *Howarth*, 12 Ch. D. 826. Foreigners vending a patented article within the realm, or causing it to be made here for exportation abroad, are liable for infringement of the patent: *Caldwell* v. *Vanvlissingen*, 9 Ha. 415; *Gibson* v. *Brand*, 11 L. J. C. P. 186. But the Court has no jurisdiction to interfere where the articles manufactured are the property of a foreign sovereign: *Vavasseur* v. *Krupp*, 9 Ch. D. 352.

An action for infringement may be brought against the manufacturer and also against persons using a patented article: *Penn* v. *Bibby*, L. R. 3 Eq. 308.

Infringements by several persons.

Where there are distinct infringements of a patent by several persons, separate actions must be brought: *Dolly* v. *Doig*, 2 Ves. 487. But where one person infringes several patents belonging to the same patentee, the several infringements may be included in the same action: see *Lister* v. *Wood*, cit. Seton, 909.

CHAPTER II.

COPYRIGHT.

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1. PROPERTY IN UNPUBLISHED WORKS.

Property in Unpublished Works.

No property in ideas.

Ideas.]—Mere theories or ideas which have not been reduced to writing or otherwise received a material embodiment, have none of the qualities or incidents of property, and consequently cannot be the subject of copyright. "It is a well-known and established maxim of law, that nothing can be the object of property which has not a corporeal substance:" *per Yates*, J., in *Miller* v. *Taylor*, 4 Burr. 2361.

Property in manuscripts.

Manuscripts.]—An exclusive proprietary right (which is often called copyright) subsists in an unprinted and unpublished work. So in *Macklin* v. *Richardson*, Ambl. 694, an injunction was granted to restrain publication of a play, which the author

had occasionally allowed to be acted. In *The Duke of Queensbury* v. *Shebbeare*, 2 Eden, 329, Lord Keeper *Henley* decreed an injunction to restrain the printing of an unpublished manuscript (being the history of the reign of Charles II. by Lord Clarendon), a copy of which had been, by the representative of the author, given to the person under whom the defendant claimed, but not with the intention that he should publish it: see *Southey* v. *Sherwood*, 2 Mer. 435; *Webb* v. *Rose*, cit. 4 Bur. 2330; *Forrester* v. *Waller*. Id. 2331; *Burnett* v. *Chetwood*, 2 Mer. 442, 443 (*a*). An author's ownership of his unpublished manuscript is founded on the common law right of property, and is independent of statutory enactment (*b*). "Cases of abridgements, translations, extracts and criticisms of published works, have no reference to the present question: they all depend upon the extent of right under the Acts respecting

Property in Unpublished Works.

(*a*) *Yates*, J., in *Miller* v. *Taylor*, *supra*, said: "Ideas are free. But while the author confines them in his study, they are like birds in a cage, which none but he can have a right to let fly; for, till he thinks proper to emancipate them, they are under his dominion. It is very certain every man has a right to keep his own sentiments if he pleases; he has certainly a right to judge whether he will make them public, or commit them only to the sight of his friends. In that state the manuscript is, in every sense, his peculiar property; and no man can take it from him, or make any use of it which he has not authorised, without being guilty of a violation of his property. And as every author or proprietor of a manuscript has a right to determine whether he will publish it or not, he has a right to first publication; and whoever deprives him of that priority is guilty of a manifest wrong, and the Court have a right to stop it." And Lord *Cottenham* said, in the celebrated case of *Prince Albert* v. *Strange*, that "the property of an author or composer of any work, whether of literature, art, or science, in such work unpublished and kept for his private use and pleasure, cannot be disputed, after the many decisions in which that proposition has been affirmed or assumed": see 1 Mac. & G., at p. 42.

Property in manuscripts.

(*b*) Whether or not the word "copyright" is to be applied to property in manuscripts is perhaps not a matter of great importance; it is, however, essential in considering questions with regard to works of literature, art, or science, to bear constantly in mind the distinction between such property and copyright in literary and other works after publication, which, as it now exists, is created by statute, and depends for its assertion and enforcement on the observance of statutory requirements.

Whether there is copyright in manuscript.

Property in Unpublished Works.

copyright, and have no analogy to the exclusive rights in the author of unpublished compositions, which depend entirely upon the common law right of property:" *per* Lord *Cottenham*, C., in *Prince Albert* v. *Strange*, 1 Mac. & G. at p. 43. So also in *Jeffreys* v. *Boosey*, 4 H. L. C. 867, *Erle*, J., in delivering his opinion to the House of Lords said, "The nature of a right of an author in his works is analogous to the rights of ownership in other personal property, and is far more extensive than the control of copying after publication in print, which is the limited meaning of copyright in its common acceptation, and which is the right of an author, to which the statute of Anne relates. Thus if, after composition, the author chooses to keep his writings private, he has the remedies for wrongful abstraction of copies analogous to those of an owner of personalty in the like case. He may prevent publication; he may require back the copies wrongfully made; he may sue for damages, if any are sustained; also if the wrongful copies were published abroad, and the books were imported for sale without knowledge of the wrong; still the author's right to his composition would be recognised against the importer, and such sale would be stopped." And his Lordship added, "Again, if an author chooses to impart his manuscript to others without general publication, he has all the right of disposing of it incidental to personalty. He may make an assignment either absolute or qualified in any degree. He may lend, or let, or give, or sell any copy of his composition with or without liberty to transcribe, and if with liberty of transcribing, he may fix the number of transcripts which he permits. If he prints for private circulation only, he still has the same rights, and all these rights he may pass to his assignee. About the rights of the author before publication at common law, all are agreed."

Copyright in letters whether in the writer or in the receiver.

Letters.]—The law as to unpublished manuscripts is illustrated by the cases on letters, of which several are reported. In 1741 Pope obtained an injunction prohibiting Curl from vending a book intitled "Let-

ters from Swift, Pope, and others." Upon motion after answer to dissolve, the injunction was continued by Lord *Hardwicke*, C., only as to those letters which were under Mr. Pope's name in the book, and which were written by him, and not as to those which were written to him; thus, both positively and negatively, establishing the principle that the copyright in correspondence belongs to the writer, and not to the receiver: *Pope* v. *Curl*, 2 Atk. 342: see *Percival* v. *Phipps*, 2 Ves. & B. at p. 26; *Oliver* v. *Oliver*, 11 C. B. (N. S.) 139; see also *Hopkinson* v. *Lord Burghley*, L. R. 2 Ch. 447.

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In the case of Lord Chesterfield's letters (*Thompson* v. *Stanhope*, Ambl. 737), the right of the receiver to publish was negatived by Lord *Apsley*, C., who granted an injunction restraining the widow of Lord Chesterfield's son from publishing the letters. In the case of *E. of Granard* v. *Dunkin*, 1 Ball & B. 207, an injunction was granted under circumstances similar to those in *Gee* v. *Pritchard*, *infra*, p. 668, except that the person restrained was a stranger, and the bill was filed by the executor of the receiver of the letters.

Right to publish letters in vindication of character.

The writer of letters may, however, by his conduct, disentitle himself from restraining the receiver from publishing them, *e.g.*, by bringing accusations against the receiver, which may be disproved by publication of the letters. In the case of *Perceval* v. *Phipps*, 2 Ves. & B. 19, an injuction was obtained, *ex parte*, from Lord *Eldon*, C., to restrain the publication, in a newspaper belonging to the defendant Phipps, of letters which the bill alleged to be of a private nature, and to have been written by the plaintiff to the defendant Mitford, in confidence that he would not permit them to be published. The answer alleged that various communications relating to matters which much engaged the public attention, and purporting to have been written by the plaintiff for insertion in the paper, had been furnished by Mitford to Phipps; that the plaintiff afterwards denied the genuineness of those articles, when Mitford produced letters (being the letters in question) written by the plaintiff to him to prove such genuine-

Perceval v. *Phipps.*

Property in Unpublished Works.

ness, and that the publication of them was necessary to enable Phipps to justify himself to the public; and submitted that under the circumstances he had an interest and property in the letters. Upon this answer, Sir *T. Plumer*, V.-C., dissolved the injunction.

Distinction between letters of a private and literary character.

In this case the Vice-Chancellor took a distinction between letters merely relating to private affairs, and such as possess a literary character. His Honour observed that, "though the form of familiar letters might not prevent their approaching the character of a literary work, every private letter upon any subject to any person is not to be described as a literary work to be protected upon the principle of copyright; the ordinary use of correspondence by letters is to carry on the intercourse of life between persons at a distance from each other in the prosecution of commercial or other business, which it would be very extraordinary to describe as a literary work in which the writers have a copyright."

Distinction disapproved of by Lord *Eldon*.

Gee v. *Pritchard*.

But the distinction thus taken between letters of a literary character and other letters was overruled by Lord *Eldon*, C., in the case of *Gee* v. *Pritchard*, 2 Swanst. 402. The bill was filed by the widow of W. Gee against his adopted son, W. Pritchard, seeking to restrain him from publishing letters on various family and other subjects, written by her to the defendant, and which he had threatened to publish, in a work advertised as about to be published. The bill stated that the defendant had returned the original letters to her, having, without her consent, taken copies of them; and its allegations were verified by affidavit. The injunction was granted, and Lord *Eldon* dismissed a motion to dissolve it, founded on affidavits, stating various circumstances, and that the publication of the letters was necessary to vindicate the defendant's character among his parishioners, which had been injured by the plaintiff's behaviour to him, and that he intended to distribute the copies gratuitously among his acquaintance and neighbours, and not to make any profit of them. As to supporting the injunction for the purpose of preventing the publication of libels, or an injury to the plaintiff's feelings, his Lordship

Property in Unpublished Works.

said, that was out of the question; the publication of a libel was a crime, and he had no jurisdiction to prevent the commission of a crime, except, of course, in cases arising out of the peculiar jurisdiction of the Court in respect of infants; nor could the injunction be maintained on the ground of protecting feelings. The question was, whether the bill stated facts of which the Court could take notice as a case of civil property, which it was bound to protect. His Lordship said that the previous decisions were founded on property which the writer of the letter had, *ultra* the purposes for which it was written; if that were the principle, it was immaterial whether the publication was for profit or not; it was equally an interference with the property of another. The Court had never, indeed, gone so far as to decree the restoration of letters; it recognised a joint property in the sender and the receiver. "I am of opinion that the plaintiff has a sufficient property in the original letters to authorise an injunction, unless she has by some act deprived herself of it." "I will not say that there may not be a case of exception; but if there is, the exception must be established on examination of the letters; and I think that it will be extremely difficult to say where the distinction is to be found between private letters of one nature, and private letters of another nature."

Although it is difficult to consider letters of no merit in point of style or matter, relating to private affairs, and saleable to strangers only as scandal, as coming within the scope of an act for the encouragement of literature; yet, if the defendant publishes, or proposes to publish them for sale, it may reasonably be said, that he has precluded himself by that act from denying their literary character. In an action founded on a copyright under the statute, the intention and object of the defendant in publishing might therefore be material. But as the statute has only abrogated the common-law right in cases where it has itself given a limited right (*Donaldson* v. *Becket, post,* p. 671), the question would then arise, what property has the writer at common law in the letters not treated as literary works? The tendency

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of the arguments of the judges in the cases of *Miller* v. *Taylor* and *Donaldson* v. *Becket* is certainly against any incorporeal right in them, except as literary property; and it is admitted there is none to the corporeal substance of them. As to the *receiver's* right, see *ante*, p. 666.

Letter written by agent of company.

Where a solicitor or other agent of a company writes a letter on behalf of the company to a shareholder, the letter is the property of the company, and the writer cannot restrain the company from publishing it: *Howard* v. *Gunn*, 32 Beav. 465.

Summary of the law as to letters.

Enough has been said to show that the general property in unpublished letters is vested in the writer or his representatives, and that a qualified right therein remains in the receiver, so far as is necessary for support of his rights and vindication of his character and reputation, but that third persons, standing in no privity to either party, have no right to publish them, without obtaining from the writer or his representatives a permission to publish them, or an assignment of the proprietary right therein (*c*).

Purchaser of MSS. should see that there has been no publication.

What Amounts to Publication.]—The foregoing remarks seem to establish the principle that the common-law right of property in unpublished works, which has been under consideration, ceases on publication. When, therefore, an author proposes to assign such a right, it will be incumbent on the intending purchaser to ascertain that the author has not done or authorized any act which amounts to publication, whereby the right intended to be assigned has been destroyed.

Publication at home.

Publication in this country, which will entitle the author or his assignee to the statutory protection hereafter to be considered, will put an end to his common-law proprietary right.

Whether there is any copyright at common law.

The origin and early history of the law of copyright were very fully discussed in the great case of *Miller* v. *Taylor*, 4 Burr. 2303, in which it was

(*c*) See the observations of Mr. Justice *Story* in the American case of *Folsom* v. *Marsh*, 2 Story Rep. 111, containing an elaborate and masterly statement of the law on this subject.

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decided that authors had, by the common law, a perpetual copyright in their works (*d*); and that the stat. 8 Ann. c. 19, merely gave them additional remedies for infringements during a term, without taking away their common-law rights. But in a subsequent case this doctrine was overruled by the House of Lords: and it was decided that the common-law right of authors, after publication, if they ever had any, was taken away by the statute: *Donaldson* v. *Becket*, 4 Burr. 2408; *S. C.*, 2 Br. P. C. 145 (*e*).

Donaldson v. *Becket.*

(*d*) As to the power of the House of Lords to grant to a person the exclusive privilege of publishing reports of trials before it, see *Bathurst* v. *Kearsley*, cit. 13 Ves. 494; *Gurney* v. *Longman*, Id. 492. It was said by Lord *Eldon*, C., that it was illegal to publish any part of a depending cause: see *Deacon* v. *Deacon*, 2 Russ. 607. And this rule has occasionally been put in force where the publication would tend to prejudice a fair and impartial decision: so the proprietor of the "Observer" newspaper was fined 500*l.* for contempt of Court in publishing a report of the trial of Thistlewood in defiance of the prohibition of the Court: see *Reg.* v. *Clements*, 4 B. & Al. 218; see also *Littler* v. *Thompson*, 2 Beav. 129; *Tichborne* v. *Mostyn*, L. R. 7 Eq. 55 n. As to the power of the Crown over the publication of accounts of proceedings or expeditions conducted at the expense of the Crown, see *Nicol* v. *Stockdale*, 3 Swanst. 687.

(*e*) In *Donaldson* v. *Becket*, the following questions were put for the opinion of the judges:—

1. Whether at common law an author of any work, or literary composition has the sole right of first printing and publishing the same for sale, and might bring an action against any person who printed, published, and sold the same without his consent?
2. If the author had such right originally, did the law take it away upon his printing and publishing such book or literary composition, and might any person afterwards reprint and sell, for his own benefit, such book or literary composition against the will of the author?
3. If such action would have lain at common law, is it taken away by the Statute of 8th Anne? And is an author by the said statute precluded from every remedy except on the foundation of the said statute, and are the terms and conditions prescribed thereby?
4. Whether the author of any literary composition, and his assigns, had the sole right of printing and publishing the same in perpetuity at common law?
5. Whether the right is any way impeached, restrained, or taken away by the Statute 8th Anne?

The case being an appeal from Lord *Mansfield's* judgment, he

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And it may now be regarded as settled that the author of a published work has not any other than the statutable copyright therein: *Reade* v. *Conquest*, 9 C. B. (N. S.) 768: *S. C.*, 9 W. R. 434; see also *Jeffreys* v. *Boosey*, 4 H. L. C. 815.

Publication abroad.

Whether publication abroad will destroy the common-law right of ownership is a question as yet unsettled. It is quite clear that such publication not only does not entitle the proprietor to copyright here, but disqualifies him from statutory protection (*f*): *Clementi* v. *Walker*, 2 B. & C. 861; *Guichard* v. *Mori*, 9 L. J. Ch. 227; *Page* v. *Townsend*, 5 Sim. 395; *Boucicault* v. *Delafield*, 1 H. & M. 597; see also *Low* v. *Ward*, L. R. 6 Eq. 415. In *Clementi* v. *Walker* (2 B. & C. at p. 870), *Bayley*, J., said: "Whether the act of printing and publishing abroad makes the work at once *publici juris* it is not necessary to decide; but we have no doubt that it becomes *publici juris* if the author does not take prompt measures to publish here" (*g*). And the point does not seem to have been raised in any other reported case. Simultaneous publication at home and abroad will not, however, debar the author from obtaining copyright in this country: see *Cocks* v. *Purday*, 2 Car. & K. 269; *Routledge* v. *Low*, L. R. 3 H. L. 100.

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did not give his opinion, but it was notorious that he adhered to his opinion; of the other judges there were eight to three for the affirmative on the first and fourth questions; seven to four on the second, and six to five on the third and fifth. With regard to the fourth question the view taken by the majority of the judges is supported by several decisions previous to the Statute of Anne (which was the first Act which established statutable copyright), in which an author's perpetual right of publication of his work was affirmed or assumed: see *Eyre* v. *Walker* (1735), cit. 4 Burr. 2325; *Motter* v. *Faulker* (1735), ibid.; *Walthow* v. *Walker* (1736), ibid.; *Tonson* v. *Walker* (1739), 4 Burr. 2326; *Tonson* v. *Walker* (1752), 3 Swanst. 672.

(*f*) The general rule stated in the text requires qualification by reference to the International Copyright Act, 1844 (7 & 8 Vict. c. 12) sect. 19, whereby a British subject publishing in a foreign country may, equally with a foreigner, acquire a copyright under that Act, if there is a treaty with that particular country giving effect to the Act.

(*g*) See as to promptness in publishing here, *post*, p. 698.

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To deprive an author of his common-law right of ownership in a literary work, the publication must be substantially of the complete work: he will not lose his right by a previous publication of an abridgment of the work: *Turner* v. *Robinson*, 10 Ir. Ch. R. at p. 133.

Publication of abridgment.

What amounts to publication.

The following decisions bear upon the question as to what will amount to publication, or authority for publication.

Sale of MS. copies.

In *White* v. *Geroch*, 1 Chitt. 26; 2 B. & Al. 298, it was held, that an author did not lose his copyright by selling copies of his work in manuscript. *Abbott*, C.J., said: "The words 'printed and published' have reference only to the time at which the author's exercise of right is to be dated; and, therefore, the circumstance of the plaintiff having previously published this piece in MS., would only vary the period of time at which the twenty-eight years would be calculated." His lordship, therefore, considered that a *sale* of copies of a work in MS. amounted to a *publication* of the work, from which the statutory period would commence to run. And this construction, if well founded, would apply to the present Act.

Though there is no direct authority on the point, it seems clear that a gratuitous circulation of copies of a work among friends and acquaintances would not amount to such a publication, so as to deprive the owner of his exclusive proprietary right therein: *Duke of Queensberry* v. *Shebbeare*, 2 Eden, 329; but it would seem that even a gratuitous circulation of copies by the author *generally* would amount to publication: see *Novello* v. *Ludlow*, 12 C. B. 177; see also *Dr. Paley's Case*, cit. 2 Ves. & B. 23, where a bookseller was restrained from publishing manuscripts left by Dr. Paley for the use of his own parishioners only. See also *Prince Albert* v. *Strange*, 1 Mac. & G. 25; and the opinion of *Erle*, J., in *Jeffreys* v. *Boosey*, 4 H. L. C. 867. So the distribution by a sculptor among his friends of plaster casts of a statue is not a publication of the statue: *Turner* v. *Robinson*, 10 Ir. Ch. R. at p. 134.

Parting with possession of MS.

The gift or loan of a manuscript to a person for

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perusal or custody is no authority for its publication by that person; and such publication would be a violation of the author's common-law right to the copy: *per Erle*, J., in *Jeffreys* v. *Boosey*, 4 H. L. C. 867; see also *Duke of Queensberry* v. *Shebbeare*, 2 Eden, 329. But where a work had been sent to a publisher with a view to publication, which intention was afterwards relinquished, and the author left the manuscript for twenty-three years in the hands of the publisher, an injunction to restrain its publication by persons into whose hands it had passed was refused: *Southey* v. *Sherwood*, 2 Mer. 435.

Delivery of lecture.

The delivery of a lecture to an audience admitted on payment was held, independently of the stat. 5 & 6 Will. 4, c. 65 (*infra*), not to be a publication: *Abernethy* v. *Hutchinson*, 1 H. & Tw. 28.

Exhibition, &c., of picture.

A picture is not published so as to deprive its proprietor of his common-law right of exclusive ownership by exhibiting it in a public gallery where the taking of copies is forbidden; nor by exhibiting it for the purpose of obtaining subscribers to an engraving; nor by publishing an engraving of it in a magazine or catalogue with a descriptive article: *Turner* v. *Robinson*, 10 Ir. Ch. R. 121, 510 (*h*).

Representation of play on stage.

The representation of a play on the stage by permission of the author is not such a publication as to prevent him from restraining others from infringing his proprietary rights, even though the permission has been given for a money consideration: *Macklin* v. *Richardson*, Amb. 694. In *Coleman* v. *Wathen*, 5 T. R. 245, it was held that the representation of a published play on the stage was no publication so as to constitute an infringement of statutory copyright in the book. *Buller*, J., said, "Reporting from memory can never be a publication within the statute." See also *Murray* v. *Elliston*, 5 B. & Al. 657.

Stat. 5 & 6 Will. 4, c. 65 (1st Sept. 1835).

Lectures.

Lectures.]—The statute 5 & 6 Will. 4, c. 65, intituled "An Act to prevent the Publication of

(*h*) But see as to designs for fabrics, &c., *Dalglish* v. *Jarvie*, 2 Mac. & G. 231.

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Lectures without Consent," after reciting that "printers, publishers, and other persons have frequently taken the liberty of printing and publishing lectures delivered upon divers subjects, without the consent of the authors of such lectures, or the persons delivering the same in public, to the great detriment of such authors and lecturers," enacts :—

Authors of lectures and their assigns have the sole right of publishing them.

Penalty on other persons publishing, &c., lectures without leave.

"That the author of any lecture or lectures, and the person to whom he hath sold or otherwise conveyed the copy thereof, in order to deliver the same in any school, seminary, institution, or other place, or for any other purpose, shall have the sole right and liberty of printing and publishing such lecture or lectures; and that if any person shall, by taking down the same in shorthand or otherwise in writing, or in any other way, obtain or make a copy of such lecture or lectures, and shall print or lithograph, or otherwise copy and publish the same, or cause the same to be printed, lithographed, or otherwise copied and published, without leave of the author thereof, or of the person to whom the author thereof hath sold or otherwise conveyed the same, and every person who, knowing the same to have been printed or copied and published without such consent, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such lecture or lectures, shall forfeit such printed or otherwise copied lecture or lectures, or parts thereof, together with one penny for every sheet thereof which shall be found in his custody, either printed, lithographed, or copied, or printing, lithographing, or copying, published or exposed to sale, contrary to the true intent and meaning of this act, the one moiety thereof to his Majesty, his heirs or successors, and the other moiety thereof to any person who shall sue for the same."

Sect. 2 imposes a penalty on printers or publishers of newspapers publishing lectures without leave. By sect. 3 persons allowed to attend lectures are not to be deemed to be licensed to print, copy, and publish such lectures, only because of having leave to attend such lectures (*i*). Sect. 4 excepts from the opera-

Shorthand notes of lectures and sermons.

(*i*) Persons attending lectures, though at liberty to take shorthand notes for their own information, may be restrained from publishing such notes for profit: *Abernethy* v. *Hutchinson*, 1 H. & Tw. 28; *Nicols* v. *Pitman*, 26 Ch. D. 374. In the former case Lord *Eldon* spoke of sermons as coming under the same rule.

It will be observed that this Act only extends to lectures

Property in Unpublished Works.

tion of this Act lectures published with leave of the authors, or their assignees, after expiration of the time within which the sole right to publish the same is given by the 8 Anne, c. 19, and 54 Geo. 3, c. 156, and also lectures published before the passing of this Act; and sect. 5 provides that nothing in this Act shall extend to lectures, or the printing, copying, or publishing lectures, of the delivery of which notice in writing shall not have been given to two justices two days at least before delivering the same, or to lectures delivered in any university or public school or college, or on any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation; and that the law relating thereto shall remain the same as if this Act had not passed.

Of lectures after expiration of copyright.

Act not to extend to lectures delivered in unlicensed places, &c.

2. Literary Copyright by Statute.

The stat. 8 Anne, c. 19, may be regarded as the foundation of the statute law by which copyright in published works is regulated. That Act and the subsequent statutes by which its provisions were enlarged and amended are now repealed, and the law as to literary copyright after publication is now governed by the Act about to be stated.

Stat. 5 & 6 Vict. c. 45. (Royal assent, 1st July, 1842).

The stat. 5 & 6 Vict. c. 45, intituled, "An Act to amend the Law of Copyright," after reciting that "it is expedient to amend the law relating to copyright, and to afford greater encouragement to the production of literary works of lasting benefit to the world," repeals the statutes 8 Anne, c. 19, 41 Geo. 3, c. 107, and 54 Geo. 3, c. 156, and enacts as follows:—

Interpretation of act.

Sect. 2. "That in the construction (*k*) of this Act the word

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delivered under the circumstances stated in sect. 5. As the requisite notices are seldom given, cases may arise which will be governed by the common law on the subject.

Act to be construed liberally.

(*k*) With regard to the construction of copyright Acts, Lord *Hardwicke*, C., speaking of the statute of Anne, said: "As to what has been said of the Act's being a monopoly, and that it therefore ought to receive strict construction, I am quite of a different opinion, and that it ought to receive a liberal construction, for it is very far from being a monopoly, as it is intended to secure

'book' shall be construed to mean and include every volume, part or division of a volume (*l*), pamphlet, sheet of letterpress (*m*), sheet of music (*n*), map, chart, or plan (*o*), separately published; that the words 'dramatic piece' shall be construed to mean and include every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment; that the word 'copyright' shall be construed to mean the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which

Literary Copyright by Statute.

"Book."

"Dramatic piece."

"Copyright."

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the property of books in the authors themselves, or the purchasers of the copy, as some recompense for their pains and labour in such works as may be of use to the learned world." *Gyles* v. *Wilcox*, 2 Atk. 143.

(*l*) The copyright in prints and engravings separately published is regulated by other statutes: *Vide post*, p. 745 *et seq.* But this statute extends to engravings in a book equally with the letterpress notwithstanding that the requirements of the stat. 8 Geo. 2, c. 13 (see *post*, p. 745), have not been complied with. "A book must include every part of the book, and must include every print, design, or engraving which forms part of the book as well as the letterpress therein, which is another part of it:" Per V.-C. in *Bogue* v. *Houlston*, 5 De G. & Sm. 275. Prints.

There may be copyright in an illustrated catalogue for the purpose of advertising articles for sale: see *Holten* v. *Arthur*, 1 H. & M. 603; *Grace* v. *Newman*, L. R. 19 Eq. 623: *Maple & Co.* v. *Junior Army and Navy Stores*, 21 Ch. D. 369. In the latter case, *Jessel*, M.R. said, at p. 379, that the decision in *Cobbett* v. *Woodward* (L. R. 14 Eq. 407) to the contrary, "will not bear legal examination." Illustrated catalogues.

(*m*) A distinct composition, published in a collection of similar compositions, is within this definition of a book: *White* v. *Geroch*, 2 B. & Ad. 298. In *Cox* v. *Land and Water Journal Co.*, L. R. 9 Eq. 324, *Malins*, V.-C., held that a newspaper is not within this definition, and consequently does not require registration under the Act. But *Jessel*, M.R., refused to follow this decision, saying that if he were to decide in accordance with it, he should, in his opinion, be virtually overruling the Act: *Walter* v. *Howe*, 17 Ch. D. 708. See *post*, p. 753 *et seq.* Sheet of letter-press.

(*n*) The preamble to the statute of Anne mentioned books and other *writings*, but the enacting part had the word "book" only. The Act was held to extend to writings generally; and Lord *Mansfield* held that a sonata (being an instrumental composition without words) was protected. "Music is a science; it may be written, and the mode of conveying the ideas is by signs and marks. A person may use the copy by playing it, but he has no right to rob the author of the profit by multiplying copies and disposing of them to his own use:" *Bach* v. *Longman*, Cowp. 523. Sheet of music.

(*o*) The proprietor of the copyright in a map, whether published separately or as part of a book, cannot maintain an action for infringement until he has complied with the requirements of this Act as regards registration: *Stannard* v. *Lee*, L. R. 6 Ch. 346.

Literary Copyright by Statute.

the said word is herein applied; that the words 'personal representative' shall be construed to mean and include every executor, administrator, and next of kin entitled to administration; that the word 'assigns' shall be construed to mean and include every person in whom the interest of an author in copyright shall be vested, whether derived from such author before or after the publication of any book, and whether acquired by sale, gift, bequest, or by operation of law or otherwise; that the words 'British dominions' shall be construed to mean and include all parts of the United Kingdom of Great Britain and Ireland, the islands of Jersey and Guernsey, all parts of the East and West Indies, and all the colonies, settlements, and possessions of the Crown which now are or hereafter may be acquired; and that whenever in this Act, in describing any person, matter, or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and to be applied to several persons as well as one person, and females as well as males, and several matters or things as well as one matter or thing, respectively, unless there shall be something in the subject or context repugnant to such construction."

"Personal representative."

"Assigns."

"British Dominions."

Endurance of term of copyright in book hereafter to be published in the lifetime of the author;

Sect. 3. "That the copyright in every book which shall after the passing of this Act be published (*p*) in the lifetime of its author, shall endure for the natural life of such author, and for the further term of seven years, commencing at the time of his death, and shall be the property of such author and his assigns: Provided always, that if the said term of seven years shall expire before the end of forty-two years from the first publication (*q*) of such book, the copyright shall in that case endure for such period of forty-two years (*r*); and that the copyright in every book which shall be published after the death of its author shall endure for the term of forty-two years from the first publication thereof, and shall be the property of the proprietor of the author's manuscript from which such book shall be first published, and his assigns."

if published after the author's death.

As to subsisting copyrights.

Sect. 4 extends the benefits of this Act to authors of books published before the passing thereof, and in which copyright then still subsists (*s*).

(*p*) As to the place of publication, see sect. 6.

(*q*) See *White* v. *Geroch*, 1 Chitt. 26, cited *infra*.

(*r*) An assignment of a copyright in general terms will pass the whole interest which an author can take under the Act: *Carnan* v. *Bowles*, 2 B. C. C. 80.

(*s*) See as to the effect and operation of this section: *Marzials* v. *Gibbons*, L. R. 9 Ch. 518.

Literary Copyright by Statute.

Sect. 5. "And whereas it is expedient to provide against the suppression of books of importance to the public; be it enacted, that it shall be lawful for the judicial committee of her Majesty's Privy Council, on complaint made to them that the proprietor of the copyright in any book after the death of its author has refused to republish or to allow the republication of the same, and that by reason of such refusal such book may be withheld from the public, to grant a licence to such complainant to publish such book, in such manner and subject to such conditions as they may think fit, and that it shall be lawful for such complainant to publish such book according to such licence."

Privy council may license republication of books which proprietor refuses to republish on the death of author.

Sect. 6 provides that a printed copy of the whole of every book, together with all maps, prints, or other engravings belonging thereto, and also of any subsequent edition, additions, or alterations, shall, within one calendar month after any such book shall first be sold, published, or offered for sale within the bills of mortality, or within three calendar months if the same shall first be sold, published, &c., in any other part of the *United Kingdom*, or within twelve calendar months after the same shall first be sold, published, &c., in any other part of the *British dominions*, be delivered, on behalf of the publisher, at the British Museum.

Copies of all books and subsequent editions to be delivered at the British Museum (*t*).

By sect. 7, that every copy of any book required to be delivered as aforesaid is to be delivered at the British Museum between ten in the forenoon and four in the afternoon on any day except Sunday, Ash Wednesday, Good Friday, and Christmas-day, to one of the officers of the museum, or to some person authorized by the trustees to receive the same; and such officer or person is to give a receipt in writing for the same.

Mode of delivering at the British Museum.

Sect. 8 provides that a copy of every book, and of any subsequent edition of every book containing additions and alterations, with all maps and prints belonging thereto, is required on demand thereof in writing left at the place of abode of the publisher

A copy of every book be delivered within a month after demand to Stationers' Company, for

(*t*) The object of this section is to obtain for the British Museum a copy of every book published in any part of the British Dominions, whether there is any copyright in the book or not: per Lord *Cairns*, C., in *Routledge* v. *Low*, L. R. 3 H. L. 100.

Literary Copyright by Statute.

Oxford, Cambridge, Edinburgh, and Dublin Universities.

within twelve months next after the publication, under the hand of the officer of the Company of Stationers appointed for the purposes of this Act, or under the hand of any other person thereto authorized by the Bodleian Library at Oxford, the Public Library at Cambridge, the Library of the Faculty of Advocates at Edinburgh, the Library of the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, be delivered within one month after demand to said officer of the Company of Stationers, for the use of the library for which such demand shall be made, within twelve months; and the said officer is to give a receipt in writing for the same, and within one month after any delivery of the book.

By sect. 9 publishers may deliver copies to the libraries, instead of at the Stationers' Company; and sect. 10 imposes a penalty of five pounds in addition to the value of the book which ought to have been delivered, for every default in delivering copies of books for the use of the libraries.

Book of registry to be kept at Stationers' Hall.

Sect 11. "That a book of registry, wherein may be registered, as hereinafter enacted, the proprietorship in the copyright of books, and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licences affecting such copyright, shall be kept at the Hall of the Stationers' Company, by the officer appointed by the said company for the purposes of

Inspection.

this Act, and shall, at all convenient times, be open to the inspection of any person, on payment of one shilling for every entry which shall be searched for or inspected in the said book; and that such officer shall, whenever thereunto reasonably required,

Copy of entry.

give a copy of any entry in such book, certified under his hand, and impressed with the stamp of the said company, to be provided by them for that purpose, and which they are hereby required to provide, to any person requiring the same, on payment to him of

Copy to be evidence.

the sum of five shillings; and such copies so certified and impressed shall be received in evidence in all courts, and in all summary proceedings, and shall be *primâ facie* proof of the proprietorship or assignment of copyright or licence as therein expressed, but subject to be rebutted by other evidence; and, in the case of dramatic or musical pieces, shall be *primâ facie* proof of the right of representation or performance, subject to be rebutted as aforesaid."

Literary Copyright by Statute.

Sect. 12. "That if any person shall wilfully make or cause to be made any false entry in the registry book of the Stationers' Company, or shall wilfully produce or cause to be tendered in evidence any paper falsely purporting to be a copy of any entry in the said book, he shall be guilty of an indictable misdemeanour, and shall be punished accordingly."

Making a false entry or producing false copy, a misdemeanour.

Sect. 13. "That after the passing of this Act, it shall be lawful (*u*) for the proprietor of copyright in any book heretofore published, or in any book hereafter to be published, to make entry in the registry book of the Stationers' Company of the title of such book, the time of the first publication thereof, the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright (*x*) of the said book, or any portion of such copyright, in the form in that behalf given in the Schedule to this Act annexed, upon payment of the sum of five shillings to the officer of the said company; And that it shall be lawful for every such registered proprietor to assign his interest, or any portion of his interest therein, by making entry in the said book of registry of such assignment, and of the name and place of abode of the assignee thereof, in the form given in that behalf in the said Schedule, on payment of the like sum; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, without being subject to any stamp or duty, and shall be of the same force and effect as if such assignment had been made by deed (*y*)."

Entries of copyright may be made in the book of registry.

Sect. 14 empowers any person who may deem himself aggrieved by any entry made in the registry, to apply to the Court of Queen's Bench, now the Queen's Bench Division of the High Court of Justice, or to a judge in vacation, who shall make such order for expunging, varying, or confirming such entry, either with or without costs, as to such Court or judge shall seem just.

Sect. 15. "That if any person shall, in any part of the British

Remedy for

(*u*) The entry at Stationers' Hall was before this Act compulsory, though neglect to make the entry did not affect the copyright: *Beckford* v. *Hood*, 7 T. R. 620. The entry is now only made a condition precedent to the right to sue for an infringement. Sect. 24, *infra*.

(*x*) As to what is a sufficient description: see *Lover* v. *Davidson*, 1 C. B. N. S. 182.

(*y*) The adoption of this mode of transfer is optional, as the Act does not provide for entry of any special terms; these, if required, should be embodied in a separate instrument.

Literary Copyright by Statute.

piracy by action on the case.

Dominions, after the passing of this Act, print, or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall import for sale or hire any such book so having been unlawfully printed from parts beyond the sea, or, knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose to sale or hire, or cause to be sold, published, or exposed to sale or hire, or shall have in his possession, for sale or hire, any such book so unlawfully printed or imported, without such consent as aforesaid, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright, to be brought in any court of record in that part of the British Dominions in which the offence shall be committed: Provided always, that in Scotland such offender shall be liable to an action in the Court of Session in Scotland, which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there."

In actions for piracy, defendant to give notice of objections to the plaintiff's title on which he means to rely.

Sect. 16. "That after the passing of this Act, in any action brought within the British Dominions against any person for printing any such book for sale, hire, or exportation, or for importing, selling, publishing, or exposing to sale or hire, or causing to be imported, sold, published, or exposed to sale or hire, any such book, the defendant on pleading thereto shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action; and if the nature of his defence be, that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when and the place where such book was first published, otherwise the defendant in such action shall not at the trial or hearing of such action be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright therein; and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher

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of such book, or the proprietor of the copyright therein, than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication with the title, time, and place specified in such notice."

No person, except the proprietor, &c., shall import into the British Dominions for sale or hire any book first composed, &c., within the United Kingdom, and reprinted elsewhere, under penalty of forfeiture, and of £10 and double value.

Books may be seized by officers of Customs or Excise.

Sect. 17. "That after the passing of this Act it shall not be lawful for any person, not being the proprietor of the copyright, or some person authorised by him, to import into any part of the United Kingdom, or into any other part of the British Dominions, for sale or hire, any printed book first composed or written or printed and published in any part of the said United Kingdom, wherein there shall be copyright, and reprinted in any country or place whatsoever out of the British Dominions; And if any person, not being such proprietor or person authorised as aforesaid, shall import or bring, or cause to be imported or brought, for sale or hire, any such printed book, into any part of the British Dominions, contrary to the true intent and meaning of this Act, or shall knowingly sell, publish, or expose to sale or let to hire, or have in his possession for sale or hire, any such book, then every such book shall be forfeited, and shall be seized by any officer of Customs or Excise, and the same shall be destroyed by such officer; And every person so offending, being duly convicted thereof before two justices of the peace for the county or place in which such book shall be found, shall also for every such offence forfeit the sum of ten pounds, and double the value of every copy of such book which he shall so import or cause to be imported into any part of the British Dominions; or shall knowingly sell, publish, or expose to sale or let to hire, or shall cause to be sold, published, or exposed to sale or let to hire, or shall have in his possession for sale or hire, contrary to the true intent and meaning of this Act, five pounds to the use of such officer of Customs or Excise, and the remainder of the penalty to the use of proprietor of the copyright in such book."

As to the copyright in encyclopædias, periodicals, and works published in a series, reviews, or magazines.

Sect. 18. "That when any publisher or other person shall, before or at the time of the passing of this Act, have projected, conducted, and carried on, or shall hereafter project, conduct, and carry on, or be the proprietor of any encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any volumes, parts, essays, articles, or portions thereof, for publication in or as part of the same, and such work, volumes, parts, essays, articles, or portions shall have been or shall hereafter be composed under such employment, on the terms that the copyright therein shall belong

Literary Copyright by Statute.

to such proprietor, projector, publisher, or conductor, and paid for by such proprietor, projector, publisher, or conductor, the copyright in every such encyclopædia, review, magazine, periodical work, and work published in a series of books or parts, and in every volume, part, essay, article, and portion so composed and paid for, shall be the property of such proprietor, projector, publisher, or other conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by this Act; except only that in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature, after the term of twenty-eight years from the first publication thereof respectively, the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act: Provided always, that during the term of twenty-eight years the said proprietor, projector, publisher, or conductor shall not publish any such essay, article, or portion separately or singly without the consent previously obtained of the author thereof, or his assigns: Provided also, that nothing herein contained shall alter or affect the right of any person who shall have been or who shall be so employed as aforesaid, to publish any such his composition in a separate form, who by any contract, express or implied, may have reserved or may hereafter reserve to himself such right. But every author reserving, retaining, or having such right shall be entitled to the copyright in such composition when published in a separate form, according to this Act, without prejudice to the right of such proprietor, projector, publisher, or conductor as aforesaid."

Proviso for authors who have reserved the right of publishing their articles in a separate form.

Proprietors of encyclopædias and works published in a separate form may have benefit of registration of whole.

Sect. 19. "That the proprietor of the copyright in any encyclopædia, review, magazine, periodical work, or other work published in a series of books or parts, shall be entitled to all the benefits of the registration at Stationers' Hall under this Act, on entering in the said book of registry the title of such encyclopædia, review, periodical work, or other work published in a series of books or parts, the time of the first publication of the first volume, number, or part thereof, or of the first number or volume first published after the passing of this Act in any such work which shall have been published heretofore, and the name and place of abode of the proprietor thereof, and of the publisher thereof, when such publisher shall not also be the proprietor thereof."

The provisions of 3 & 4 Will. 4, c. 15, extended to musical compositions, and

Sect. 20. "And whereas an Act was passed in the third year of the reign of his late Majesty, to amend the law relating to dramatic literary property, and it is expedient to extend the term of the sole liberty of representing dramatic pieces given by that Act to

Literary Copyright by Statute.

the full time by this Act provided for the continuance of copyright: And whereas it is expedient to extend to musical compositions the benefits of that Act, and also of this Act; be it therefore enacted, That the provisions of the said Act of his late Majesty, and of this Act, shall apply to musical compositions, and that the sole liberty of representing or performing, or causing or permitting to be represented or performed, any dramatic piece or musical composition, shall endure and be the property of the author thereof, and his assigns, for the term in this Act provided for the duration of copyright in books; and the provisions hereinbefore enacted in respect of the property of such copyright, and of registering the same, shall apply to the liberty of representing or performing any dramatic piece or musical composition, as if the same were herein expressly re-enacted and applied thereto, Save and except that the first public representation or performance of any dramatic piece or musical composition shall be deemed equivalent, in the construction of this Act, to the first publication of any book: Provided always, that in case of any dramatic piece or musical composition in manuscript, it shall be sufficient for the person having the sole liberty of representing or performing, or causing to be represented or performed the same, to register only the title thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor thereof, and the time and place of its first representation or performance."

the term of copyright as provided by this act, applied to the liberty of representing dramatic pieces and musical compositions.

Sect. 21. "That the person who shall at any time have the sole liberty of representing such dramatic piece or musical composition shall have and enjoy the remedies given and provided in the said Act of the third and fourth years of the reign of his late Majesty King William the Fourth, passed to amend the laws relating to dramatic literary property, during the whole of his interest therein, as fully as if the same were re-enacted in this Act."

Proprietors of right of dramatic representations shall have all the remedies given by 3 & 4 Will. 4, c. 15.

Sect. 22. "That no assignment of the copyright of any book consisting of or containing a dramatic piece or musical composition shall be holden to convey to the assignee the right of representing or performing such dramatic piece or musical composition, unless an entry in the said registry book shall be made of such assignment, wherein shall be expressed the intention of the parties that such right should pass by such assignment."

Assignment of copyright of a dramatic piece not to convey the right of representation.

Sect. 23. "That all copies of any book wherein there shall be copyright, and of which entry shall have been made in the said registry book, and which shall have been unlawfully printed or

Books pirated to be the property of proprietor of

Literary Copyright by Statute.

imported without the consent of the registered proprietor of such copyright, in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright, and who shall be registered as such, and such registered proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same, or damages for the detention thereof, in an action of detinue, from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of trover."

copyright, and recoverable by action.

No proprietor of copyright commencing after this act shall sue or proceed for any infringement before making entry in the book of registry.

Sect. 24. "That no proprietor of copyright in any book which shall be first published after the passing of this Act shall maintain any action or suit, at law or in equity, or any summary proceeding, in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made, in the book of registry of the Stationers' Company, of such book, pursuant to this Act: Provided always, that the omission to make such entry shall not affect the copyright in any book, but only the right to sue or proceed in respect of the infringement thereof as aforesaid: Provided also, that nothing herein contained shall prejudice the remedies which the proprietor of the sole liberty of representing any dramatic piece shall have by virtue of the Act passed in the third year of the reign of his late Majesty King William the Fourth, to amend the laws relating to dramatic literary property, or of this Act, although no entry shall be made in the book of registry aforesaid."

Proviso for dramatic pieces.

Copyright shall be personal property.

Sect. 25. "That all copyright shall be deemed personal property, and shall be transmissible by bequest, or, in case of intestacy, shall be subject to the same law of distribution as other personal property, and in Scotland shall be deemed to be personal and moveable estate."

General issue in certain actions.

Costs.

Sect. 26. "That if any action or suit shall be commenced or brought against any person or persons whomsoever for doing or causing to be done any thing in pursuance of this Act, the defendant or defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff shall become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath: And that all actions, suits, bills, indictments, or informations for any offence that shall be committed against this Act shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be

Limitation of actions;

void and of none effect: Provided that such limitation of time shall not extend or be construed to extend to any actions, suits, or other proceedings which under the authority of this Act shall or may be brought, sued, or commenced for or in respect of any copies of books to be delivered for the use of the British Museum, or of any one of the four libraries hereinbefore mentioned."

Literary Copyright by Statute.

not to extend to actions, &c., in respect of the delivery of books.

Sect. 27 provides, "That nothing in this Act contained shall affect or alter the rights of the two Universities of Oxford and Cambridge, the colleges or houses of learning within the same, the four universities in Scotland, the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, and the several colleges of Eton, Westminster, and Winchester, in any copyrights heretofore and now vested or hereafter to be vested in such universities and colleges respectively, any thing to the contrary herein contained notwithstanding (*z*)."

Saving the right of the Universities, and the Colleges of Eton, Westminster, and Winchester.

Sect. 28 provides, "That nothing in this Act contained shall affect, alter, or vary any right subsisting at the time of passing of this Act, except as herein expressly enacted; and all contracts, agreements, and obligations made and entered into before the passing of this Act, and all remedies relating thereto, shall remain

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(*z*) The stat. 15 Geo. 3, c. 53, enacts that the two Universities in England, and four Universities in Scotland, and the several Colleges of Eton, Westminster, and Winchester respectively, "shall, at their respective presses, have for ever the sole liberty of printing and reprinting all such books as shall at any time hereafter have been or (having not been heretofore published or assigned) shall at any time hereafter be bequeathed or otherwise given by the author or authors of the same respectively, or the representatives of such author or authors, to or in trust for the said universities, or to or in trust for any college or houses of learning within the same, or to or in trust for the said four universities in Scotland [they are mentioned in the title to the Act], or to or in trust for the said colleges of Eton, Westminster, and Winchester, or any of them, for the purposes aforesaid [*i.e.*, 'for the advancement of learning and other beneficial purposes of education'], unless the same shall have been bequeathed or given for any term of years or other limited term."

Rights of Universities, &c.

Sect. 2 imposes penalties on persons infringing the rights given by the Act.

Sect. 3 makes the privilege void if the universities shall delegate, grant, lease, or sell these copyrights, or allow, permit, or authorise any person to print or reprint the same.

Sect. 4. No person to be subject to penalties unless the title to the copy of the book is entered within two months after the bequest or gift shall have come to the knowledge of the Vice-Chancellor of the university, &c.

Literary Copyright by Statute.

in full force, any thing herein contained to the contrary notwithstanding."

Sect. 29. "That this Act shall extend to the United Kingdom of Great Britain and Ireland, and to every part of the British Dominions."

SCHEDULE TO WHICH THE PRECEDING ACT REFERS.

1. Form of Minute of Consent to be Entered at Stationers' Hall.

We, the undersigned, A. B., of ——, the author of a certain book, intituled Y. Z. [*or* the personal representative of the author, *as the case may be*], and C. D., of ——, do hereby certify, That we have consented and agreed to accept the benefits of the act passed in the fifth year of the reign of her Majesty Queen Victoria, cap. 45, for the extension of the term of copyright therein provided by the said act, and hereby declare that such extended term of copyright therein is the property of the said A. B. [*or* C. D.]

Dated this —— day of ——, 18—.

(Signed) A. B.

Witness, C. D.

To the Registering Officer appointed by the Stationers' Company.

2. Form of Requiring Entry of Proprietorship.

I, A. B., of ——, do hereby certify, That I am the proprietor of the copyright of a book, intituled Y. Z., and I hereby require you to make entry in the register book of the Stationers' Company of my proprietorship of such copyright, according to the particulars underwritten.

Title of Book.	Name of Publisher, and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
Y. Z.		A. B.	

Dated this —— day of ——, 18—.

Witness, C. D.

(Signed) A. B.

3. Original Entry of Proprietorship of Copyright of a Book.

Time of making the Entry.	Title of Book.	Name of the Publisher, and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
	Y. Z.	A. B.	C. D.	

4. Form of Concurrence of the Party Assigning in any Bank Previously Registered.

I, A. B., of ——, being the assignor of the copyright of the book hereunder described, do hereby require you to make entry of the assignment of the copyright therein.

Title of Book.	Assignor of the Copyright.	Assignee of Copyright.
Y. Z.	A. B.	C. D.

Dated this —— day of ——, 18—.

(Signed) A. B.

5. Form of Entry of Assignment of Copyright in any Book Previously Registered.

Date of Entry.	Title of Book.	Assignor of the Copyright.	Assignee of Copyright.
	[Set out the title of the book, and refer to the page of the registry book in which the original entry of the copyright thereof is made.]	A. B.	C. D.

Definition and Nature of Copyright.]—The stat. 5 & 6 Vict. c. 45, sect. 2, defines copyright as "the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied." The Act mainly applies to literary compositions or "books" as thereby defined, with the exceptions to be presently noticed (*a*).

Definition and nature of copyright after publication.

A "book" is defined by sect. 2 as a volume or part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan

(*a*) The sections of the Act which deal with subjects other than books or parts or editions of books are sect. 11, providing for the registration of copyright not only in books, but also in "dramatic and musical pieces whether in manuscript or otherwise;" and sects. 20 and 21, also relating to musical and dramatic compositions: the operation of these sections will be considered, *post*, pp. 737 *et seq.*

Subject of Copyright.

separately *published* (*b*). It is therefore clear that statutable copyright in literary works cannot be acquired until after publication: see *Henderson* v. *Maxwell*, 5 Ch. D. 892. And, notwithstanding much difference of judicial opinion in former times, it may now be regarded as settled that an author, after publication of his work has no right, other than the statutable copyright therein: see *Donaldson* v. *Becket*, 4 Beav. 2408; *Murray* v. *Elliston*, 2 B. & Ad. 657; *Jeffreys* v. *Boosey*, 4 H. L. C. 876; *Reade* v. *Conquest*, 9 C. B. (N. S.) 768; and see *ante*, pp. 670, 671.

Copyright in part of a work.

What Literary Works are the subject of Statutable Copyright.]—Copyright may exist in a single leaf or page of a larger publication distinct from the right to other parts of the publication: *White* v. *Geroch*, 2 B. & Al. 298; 1 Chitt. 24. Where an American author brought out a work in the monthly parts of a magazine published at Boston, U.S., and having residence in Canada, for the purpose of acquiring a British copyright, brought out the work in London in a complete form when the last six chapters had not as yet been published in the magazine, it was held that the copyright was divisible, and the infringement thereof as regards the last six chapters was restrained by injunction: *Low* v. *Ward*, L. R. 6 Eq. 415.

Notes, additions, and corrections.

So there may be a copyright in notes, additions, or corrections to a work which belongs to the public, or to another person: *Mason* v. *Murray*, cit. 1 East, 360; *Tonson* v. *Walker*, 3 Swanst. 672; *Cary* v. *Longman*, 3 Esp. 273; 1 East, 358; see *Cary* v. *Faden*, 5 Ves. 24; or in original matter forming part of a compilation (and, as will be seen, in the compilation itself, so far as the selection and arrangement of the matter is concerned): *Lewis* v. *Fullarton*, 2 Beav. 6.

Copyright in Compilations.]—There is copyright

(*b*) As to the meaning of the several terms included in this definition, see the notes to sect. 2 of the statute, *ante*, p. 677.

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in every book which is the result of thought or labour, or, it may perhaps be added, expense, which implies the labour of some other person. Therefore, although there can be no copyright in the mere design, plan, or idea of a work, or in the choice of subject (but see *Carnan* v. *Bowles*, 1 Cox, 284), and although there are some subjects or plans, such as road-books, maps, directories, &c., which must necessarily lead to very similar results; and others, such as mathematical tables, which if accurately performed, and identical in plan, must be absolutely identical; yet, the compiler or maker of any such work is entitled to restrain any other person from copying his work, and to sue him for damages if he does so: *Cary* v. *Longman*, 1 East, 358 (road-book); *Fisher* v. *Murray*, 1 East, 363, n. (Chronology); *Matthewson* v. *Stockdale*, 12 Ves. 270 (East India Directory); *Longman* v. *Winchester*, 16 Ves. 269 (Court Calendar); *Kelly* v. *Hooper*, 4 Jur. 21 (Post-office Directory); *Wyatt* v. *Barnard*, 3 Ves. & B. 77 (translation of scientific work); *Butterworth* v. *Robinson*, *Vesey* v. *Sweet*, 5 Ves. 709 (law reports). See *Barfield* v. *Nicholson*, 2 S. & St. 1. "What room can there be for originality upon such a subject as a chart or a map? That may be a reason for not making a new chart or map; but it is no reason for a servile imitation": *per* Lord *Eldon*, C., in *Matthewson* v. *Stockdale*, 12 Ves. at p. 274. Though any man may publish a book of roads that would be precisely the same as the plaintiff's book, yet he cannot take that book and copy it: *Wilkins* v. *Aikin*, 17 Ves. at p. 425; *Tonson* v. *Walker*, 3 Swanst. 672.

Design or plan.

In many cases the value and success of a particular publication depend mainly upon the choice of subject and plan, and of time of publication, the execution of the work requiring no particular talent, and being such as may be entrusted to any hackney author. Innumerable ephemeral publications, and not a few of which either the substance or the plan has become perennial, have been projected by publishers who have employed others to work out their ideas. But it is perfectly clear that there is no copyright in the

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most valuable part of these works, their design or plan (*c*).

Copyright in arrangements of materials which are common property.

Although the collection and arrangement of materials which are common property creates a copyright in that particular collection and arrangement, yet, if that which is open to the world, and may be copied by any one, has been merely copied, and not improved by arrangement or otherwise, no copyright exists in the copy, and any one may copy from that without going to the original source (*d*). Thus, in

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Copyright in title of book.

(*c*) Notwithstanding certain decisions apparently to the contrary (see *Mack* v. *Petter*, L. R. 14 Eq. 431 ; *Weldon* v. *Dicks*, 10 Ch. D. 247), it would seem that there cannot in general be any copyright in the title or name of a book : see *Spottiswoode* v. *Clarke*, 2 Ph. 154 ; *Kelly* v. *Byles*, 40 L. T. (N. S.) 431 ; *Dicks* v. *Yates*, 18 Ch. D. 76. Indeed, a title is rather of the nature of a trade-mark than a subject of copyright. Of course equity will relieve against such an imitation of a work as is intended and operates to deceive the public into the belief that they are purchasing that work. Thus the publication of a magazine as a continuation of another magazine, and with the same kind of wrapper, was restrained by Lord *Eldon*, C., partly on this ground, and partly because the defendant had been employed to publish the plaintiff's works, and in that character received contributions from correspondents. *Hogg* v. *Kirby*, 13 Ves. 215. See *Clement* v. *Maddick*, 1 Giff. 98 ; *Kelly* v. *Hutton*, L. R. 3 Ch. 703 ; *Maxwell* v. *Hogg*, L. R. 2 Ch. 307 ; *Barfield* v. *Nicholson*, 2 Sim. & St. 1. In *Keene* v. *Harris* (cited in *Cruttwell* v. *Lye*, 17 Ves. 338), the printer of a newspaper bequeathed to his widow the benefit of the paper, subject to the trust of maintaining and educating his family. Having formed an attachment for the person who had been employed as foreman on the paper, she assisted him in setting up the same paper, giving him the use of the letter-press, &c., on the premises. Upon a bill filed by the executors an injunction was granted. But in this case it is obvious that there were grounds on which to found the injunction even if there had been no copyright in the title of the paper. See as to the goodwill of a newspaper, *Longman* v. *Tripp*, 2 N. R. 67. In the argument in *Hogg* v. *Kirby*, 8 Ves. 217, it was said to have been determined that an action lay for publishing a newspaper under the same title as one already established.

Fraudulent imitation of a periodical work.

False representations as to authorship.

Where the publisher advertised for sale certain poems which he represented to be the work of Lord Byron, who was abroad, an injunction was granted until answer or further order to restrain the publication, Lord Byron's agents deposing to their belief that the poems were not Lord Byron's work, and to circumstances rendering it highly improbable that they were so, and the defendant refusing to swear to his belief that they were written by Lord Byron : *Lord Byron* v. *Johnston*, 2 Mer. 29.

(*d*) In the case of "The Domestic Cookery Book," (*Rundell* v.

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Barfield v. *Nicholson*, 1 S. & St. 1, the plaintiff was proprietor of an *Architectural Dictionary*, and sought to restrain the publication of a work called the *Practical Builder*. The act of piracy principally insisted on was the copying of architectural plates and plans from the former, and the copying of an article on roofs. There was no clear proof that the figures had been actually copied from the plaintiff's work; but it was proved that both figures and letter-press had previously appeared in other works, and were public property. The arrangement being different, there could be no piracy as to that; and *Leach*, V.-C., dismissed an injunction which had been obtained, observing, that if the figures in the *Practical Builder* had in fact been copied from the *Architectural Dictionary*, this would have been no piracy, because the author of the *Architectural Dictionary* had no property in those figures. The same observation applied to the article on roofs: see *Watkins* v. *Aikin*, 17 Ves. 422.

Wyatt v. *Barnard*.

Specification of patent.

This principle was carried somewhat further in *Wyatt* v. *Barnard*, 3 Ves. & B. 77, where the act complained of was the copying of specifications of patents published in the Repertory of Arts into another periodical work. Copies of the specifications can only be got at the office by paying for them and for copies of any drawings that may be annexed, so that the expense of procuring them is very considerable. Lord *Eldon*, C., however refused an injunction, observing, that a person who chose to go to the office, copy a specification and publish it, could not by so doing acquire a right to restrain another from copying it. The point, that though another might copy the original specifications, he should not save himself the trouble and expense of doing so by pirating what

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Murray, Jac. 314), Lord *Eldon* is reported to have said, "If the plaintiff had composed those receipts, or embodied and arranged them in a book, she would have had a copyright in it; but if she had only collected them, and handed them over to Mr. Murray, I do not apprehend that they would be the subject of copyright." By *embodying* it is presumed his Lordship meant reducing to words and publishing for the first time known receipts. The point did not arise.

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another had obtained by expending that trouble and expense, is not distinctly noticed in the report. The fact that the specifications were actually copied from the plaintiff's work appears to have been admitted. In *Newton* v. *Cowie*, 12 Moo. 457, it was held (under the stat. 17 Geo. 3, c. 57, giving a copyright in engravings), that an engraving on a reduced scale of a drawing annexed to a specification was the subject of copyright. *Best*, C. J., said :—"The first engraver does not claim the monopoly of the use of the picture from which the engraving is made ; he says, take the trouble of going to the picture yourself, but do not avail yourself of my labour who have been to the picture and have executed the drawing :" see 12 Ves. 276.

Copy of engraving from specification.

Law reports.

In the case of reports of the proceedings of courts of justice, which are merely the result of labour and expense, it has been decided that a copyright exists, *post*, p. 702.

Lewis v. *Fullarton*.

In *Lewis* v. *Fullarton*, 2 Beav. 6, the plaintiffs had compiled "A Topographical Dictionary of England," consisting partly of compilations and selections from former works, and partly of original compositions, obtained for the plaintiffs at their own cost ; and the parts that were not original had been, as the plaintiffs alleged, verified by local inquiries. The defendant published "A Gazetteer of England and Wales," containing numerous passages taken from the plaintiffs' work. Lord *Langdale*, M. R., in granting an injunction, said :—"Any man is entitled to write and publish a topographical dictionary, and to avail himself of the labours of all former writers whose works are not subject to copyright, and of all public sources of information ; but whilst all are entitled to resort to common sources of information, none are entitled to save themselves trouble and expense by availing themselves, for their own profit, of other men's works still subject to copyright and entitled to protection." The injunction extended to all the articles and passages copied, taken, or colourably altered from the plaintiffs' work, without making any distinction between those parts of the plaintiffs' work which were original and those which had been copied

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from common sources: see 3 Swanst. 678; *Longman* v. *Winchester*, 16 Ves. 271.

No copyright in works injurious to public morals.

There is no copyright in any work which the Court for the time being may consider to be detrimental to public morals or religion (*e*), and a Court of Equity will not interfere against a piracy of such works, even on the admission of the defendant: Dr. *Priestley's Case*, cit. 7 Ves. 1; 2 Mer. 437; *Stockdale* v. *Onwhyn*, 2 C. & P. 163; 5 B. & C. 173; *Walcot* v. *Walker*, 7 Ves. jun. 1 (where it being suggested that the work in question was objectionable, Lord *Eldon*, C., refused to act until he had ascertained that point: *Southey* v. *Sherwood*, 2 Mer. 439, which was decided however on a different ground, *vide infra*). In *Lawrence* v. *Smith*, Jac. 471, Lord *Eldon*, doubting whether the work (Lawrence's Lectures) was to be regarded as objectionable or not, refused an injunction; and in *Murray* v. *Benbow* (*id.* 474, n.) pursued the same course with respect to Lord Byron's *Cain*. Upon similar grounds, in another case,

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Injunction to restrain publication of injurious works.

(*e*) As to the limits of the Court's fastidiousness in this respect, see *Hime* v. *Dale*, 2 Camp. 30, n. The Beggar's Opera was considered debatable ground. The policy of the course that has been taken by the courts to defend the public morals was considered to be so unquestionable in the case of *Stockdale* v. *Onwhyn*, 5 B. & C. 173, that *Abbott*, C. J., said it would be a disgrace to the common law if a judge could for a moment entertain a doubt about it. In *Southey* v. *Sherwood*, however, Lord *Eldon* declared that he could not consider whether the course he was bound to take would diminish or increase the mischief. In *Burnett* v. *Chetwood*, 2 Mer. 441, *Parker*, C., *granted an injunction* restraining the publication of an English translation of Burnett's Archæologia Sacra. The plaintiff was the author's executor, and alleged that the translation misrepresented the sense of the author; (as to this see *Archbold* v. *Sweet*, 5 C. & P. 219); but the Chancellor grounded his decision on his knowledge that the book contained "strange notions," which had better remain concealed from the vulgar in a dead language. His lordship said that he looked upon it this Court had a superintendency over all books, and might in a summary way restrain the printing or publishing any that contained reflections on religion or morality." The policy of the rule adopted by the courts was severely tried in *Southey* v. *Sherwood*, which was the cause of an author of a work, supposed to be of mischievous tendency, and which he had not published, endeavouring to stop the publication of it by another person, and failing because it was desirable to prevent the publication of such works.

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cited Jac. 474, *Leach*, V.-C., dissolved an injunction which had been obtained to restrain the pirating of *Don Juan*, but directed the defendant to keep an account.

Copyright in part of a work.

Where the parts of a work are capable of being separated, there may be a copyright in any distinct part, and the proprietor of such part may register his copyright therein: *Low* v. *Ward*, L. R. 6 Eq. 415.

Joint copyright.

So also there may be a joint authorship in a book, which would entitle the joint owners to register, and jointly to maintain actions in respect of the copyright thus registered: see *Levy* v. *Rutley*, L. R. 6 C. P. at p. 530. And an author may associate with himself in the entry any other person who will thereupon be *primâ facie* entitled to maintain jointly with the author an action for infringement of the copyright: *Stevens* v. *Wildy*, 19 L. J. Ch. (N. S.) 190.

Employment of writer by another person.

By sect. 18 of the stat. 5 & 6 Vict. c. 45 (*ante*, p. 683), where the proprietor or projector of an encyclopædia or periodical, or *any other book whatsoever*, employs any person to compose the same in whole or in part, and the same is composed accordingly on the terms that the copyright therein shall belong to the proprietor, and paid for, the statutory copyright in the matter so composed vests in the employer. Actual payment is an essential condition precedent to the acquisition of the copyright by the employer under this section: *Brown* v. *Cooke*, 11 Jur. 77; *Richardson* v. *Gilbert*, 1 Sim. N. S. 336. There need not be an express contract that the copyright is to belong to the employer; "where a man employs another to write an article, or to do anything else for him, unless there is something in the surrounding circumstances, or in the course of dealing between the parties to require a different construction, in the absence of a special agreement to the contrary, it is to be understood that the writing or other thing is produced upon the terms that the copyright therein shall belong to the employer:" per *Maule*, J., in *Sweet* v. *Benning*, 16 C. B. at p. 484; see also *Hatton* v. *Keen*, 7 C. B. (N. S.) 268.

Publication in this country

Publication in the United Kingdom is essential to the acquisition of copyright under the stat. 5 & 6

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Vict. c. 45; but the copyright, if acquired, extends throughout her Majesty's dominions: *Routledge* v. *Low*, L. R. 3 H. L. 108.

essential to copyright.

No copyright exists, either under the stat. 5 & 6 Vict. c. 45, or under the old Acts, in a work published abroad, by reason merely of such publication: see *Delondre* v. *Shaw*, 2 Sim. 237; *Guichard* v. *Mori*, 9 L. J. Ch. 227; but see the stat. 49 & 50 Vict. c. 33, *post*, pp. 767 *et seq.*, under which such copyright may be acquired under special circumstances. Thus, in the case of *Page* v. *Townshend*, 5 Sim. 395, it was held, that prints engraved and printed abroad, but first published here, were not protected from piracy here by the Acts which confer a copyright in engravings.

Works composed abroad and published there.

If an alien friend publish his work in this country, although he has composed it abroad, he is entitled to protection: *Bentley* v. *Forster*, 10 Sim. 329; see *Bach* v. *Longman*, Cowp. 623. In *Chappell* v. *Purday*, 4 Y. & C. 485, Lord *Abinger*, C. B., expressed his opinion that it was clear on the authorities that a foreigner who is the author of a work not published in his own country, may assign his right of property therein to a British subject for the period allowed by statute. And if an alien residing abroad compose a work and assign it before publication there, and the assignee first publish in this country, he is entitled to protection against a piracy by reprinting from any copies subsequently published abroad, or by importing such copies: *D'Almaine* v. *Boosey*, 1 Y. & C. 288. In that case the assignment abroad was in writing, and such as would have been sufficient in this country to pass the legal interest in a copyright: see also *Boosey* v. *Davidson*, 13 Q. B. 257.

Work published in this country by an alien.

The question in *D'Almaine* v. *Boosey* arose upon the statutes 8 Anne, c. 19, and 54 Geo. 3, c. 156, which gave a copyright to authors and their assigns of books then or thereafter composed, and printed and published, where the words "printed and published" were held to mean a printing and publication within the realm, or at least within the British dominions, as has just been seen. The word "composed," therefore, has not the meaning to which the

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words with which it is associated are restricted; and the law recognises a copyright so far subsisting in a work composed abroad and unpublished anywhere as to be capable of assignment abroad, with the effect of carrying the legal title on a first publication in this country. A copyright is personal property, *ante*, p. 686; and it is a well-settled rule, that contracts relating to personalty are to be construed and their validity determined by the rules of the country in which the contract is made: Story, Conflict of Laws, sect. 242. Thus a parol contract for the sale of personalty (as of a copyright), made in a country which allows of such contracts, would be enforced in this country, although, if made here, it would be bad, under the Statute of Frauds, without writing: *id.* sect. 262.

Previous publication abroad.

An author will lose his copyright by publication abroad, before the work is published here. In the case of *Clementi* v. *Walker*, 2 B. & C. 861, it was held that where an author who first publishes abroad, and, instead of using due diligence to publish here, forbears to publish until some other person, fairly and without blame, publishes here, he cannot insist on his privilege and at a distance of time stop a publication which has taken place here, and treat the continuance of that publication as a piracy. So in *Guichard* v. *Mori*, 9 L. J. Ch. 227, delay in publishing in this country after a publication abroad was held to amount to an abandonment of the copyright here.

And now by the International Copyright Act, 1844 (7 & 8 Vict. c. 12), it is enacted,—

Sect. 19. "That neither the author of any book nor the author or composer of any dramatic piece (*f*) or musical composition, nor the inventor, designer, or engraver of any print (*g*), nor the maker of any article of sculpture, or such other work as aforesaid, which

(*f*) The first representation abroad of a dramatic piece is the first publication within the meaning of this Act: *Boucicault* v. *Delafield*, 1 H. & M. 597; *Boucicault* v. *Chatterton*, 5 Ch. D. 267.

(*g*) It would seem that the sending for sale to this country of a number of copies of an engraving printed abroad, would not be such a publication here as would avoid the mischief of this Act: see *Page* v. *Townsend*, 5 Sim. 395.

shall, after the passing of this Act, be first published out of her Majesty's dominions, shall have any copyright therein respectively, or any exclusive right to the public representation or performance thereof, otherwise than such (if any) as he may become entitled to under this Act." Subject of Copyright.

The provisions of the International Copyright Acts will be briefly considered hereafter: see *post*, pp. 767 *et seq.*

Contemporaneous publication in this country and abroad will not deprive the proprietor of his copyright under the stat. 5 & 6 Vict. c. 45: *Cocks* v. *Purday*, 2 C. & K. 269; see *Routledge* v. *Low*, L. R. 3 H. L. 108. Contemporaneous publication at home and abroad.

Registration.]—The statutory provisions now in force with regard to the registration of literary copyright are contained in sects. 11, 12, 13 and 14 of the stat. 5 & 6 Vict. c. 45, see *ante*, pp. 680, 681. Neither the existence of copyright nor the proprietorship thereof depend on registration of a book, but the proprietor cannot enforce his exclusive right to his copyright until the statutory requirements as to registration are complied with. Registration of literary copyright.

The consequence of an omission to register the copyright in a book is that the proprietor cannot maintain any action or proceeding in respect of any infringement of such copyright: see sect. 24 of the Act, *ante*, p. 686. And even if the omission be owing to the neglect of the officials at Stationers' Hall, the remedy of the proprietor is only against the person guilty of neglect; he cannot maintain any action or proceeding for infringement against strangers who, owing to the omission to register, are in ignorance of the existence of the copyright: *Cassell* v. *Stiff*, 2 K. & J. 287. Omission to register.

No copyright is acquired by the registration of a book before its actual publication. "It is inconsistent with the whole scheme of the Copyright Act, that you should be able to register a book not published; as the Act gives a right merely from the date of the first publication, and it must therefore be idle to register a book, as it were, in embryo:" per Registration before publication.

Subject of Copyright.

Wood, V.-C., in *Correspondent Newspaper Co.* v. *Saunders*, 11 Jur. (N. S.) 540; see also *Murray* v. *Bogue*, 1 Drew. 355; *Platt* v. *Walter*, 17 L. T. (N. S.) 159; *Maxwell* v. *Hogg*, L. R. 2 Ch. 307; *Henderson* v. *Maxwell*, 5 Ch. D. 892.

Who may register.

Sect. 13 of the Act empowers the "proprietor" of the copyright in a book to make an entry in the registry-book of the required particulars. Only the author himself or his absolute assign or assigns (*h*), are "proprietors" so as to be entitled to register a book under this section, and an entry improperly obtained may be expunged: *Ex parte Bastow*, 14 C. B. 631; see also *Levy* v. *Rutley*, L. R. 6 C. P. 523. And the person making or causing to be made any false entry is guilty of misdemeanour, and punishable accordingly: see sect. 12. Where an author assigns his property in an unpublished work to another person, such assignee becomes the "proprietor" of the book or publication, and may register the copyright accordingly: *Lover* v. *Davidson*, 1 C. B. (N. S.) 182.

Entry of copyright.

The entry must state the following particulars,—(1) the title of the book, (2) the time of first publication, (3) the name and place of abode of the publisher, and (4) the name and place of abode of the proprietor: see *ante*, p. 681.

Time of publication.

If the time of first publication is not accurately stated the registration will be void: *Page* v. *Wisden*, 17 W. R. 483. The entry must state fully the year, month, and day of the month: *Mathieson* v. *Harrod*, L. R. 7 Eq. 272; *Wood* v. *Boosey*, L. R. 3 Q. B. 223; *Collette* v. *Goode*, L. R. 7 Ch. 842.

Name and place of abode of publisher.

The publisher whose name, &c., is to be entered is the first publisher: *Coote* v. *Judd*, 23 Ch. D. 727. If the publishers are a firm it is optional to enter the names of the individual partners who constitute the firm or the trade name of the firm itself: *Weldon*

Devolution of copyright.

(*h*) Copyright is personal property, and on the death of the proprietor devolves as such.

Bankruptcy.

On the bankruptcy of an author the copyright in his published works will pass to his trustee: *Longman* v. *Tripp*, 2 B. & P. (N.R.) 67; *Mawman* v. *Tegg*, 2 Russ. 392; but not, apparently, the unpublished manuscripts of the bankrupt: see *post*, p. 703.

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v. *Dicks*, 10 Ch. D. 247. But the name of the firm must be fully and accurately stated, otherwise the registration will be invalid: *Low* v. *Routledge*, 10 Jur. (N. S.) 922. The same rule would no doubt apply where the firm are the *proprietors* of a book, as has been expressly decided in the case of engravings: *post*, p. 749.

The business address of a firm of publishers will be a sufficient description to be entered on the register, without giving the private residences of the partners: *Nottage* v. *Jackson*, 49 L. T. (N. S.) 339.

Name and place of abode of proprietor.

The name, &c., of the proprietor to be entered on the register is that of the actual proprietor at the time of registration, not the original proprietor: *Weldon* v. *Dicks*, 10 Ch. D. 247. Where a proprietor having no residence in this country gave as his place of abode the address of his publisher, it was held that the entry was sufficient: *Lover* v. *Davidson*, 1 C. B. (N. S.) 182.

Crown copyright

Exceptions to the Act: the Crown and Universities.] —The Crown has long claimed the copyright in the following works and documents, and from time to time grants letters patent granting the exclusive privilege of printing and publishing them. These are the English Translation of the Bible, the Book of Common Prayer, the Statutes, the Orders of the Privy Council, and other State documents; also Lilley's Latin Grammar, Almanacs, the Year-books and Reports of judicial proceedings.

The Bible.

The copyright of the Crown in the English Translation of the Bible has been repeatedly affirmed by judicial decision: *Universities of Oxford and Cambridge* v. *Richardson*, 6 Ves. 689; *Manners* v. *Blair*, 3 Bli. N. S. 391; see also *Eyre* v. *Carnan*, cit. 9 Bac. Abr. Prerogative, F. 509; *Donaldson* v. *Basket*, 4 Burr. at p. 2408; *Millar* v. *Taylor*, *ibid.* at p. 2382; 2 Steph. Black. 39. This copyright does not extend to Hebrew or Septuagint versions of the Old Testament, or to the Greek New Testament: *Donaldson* v. *Becket*, 4 Burr. at p. 2405. Nor, as it would seem, does it prohibit persons, other than patentees, from printing the Bible or any part of it with *bonâ fide*

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notes: 2 Ev. Stat. p. 19, note 11; or original translations of particular books or extracts from the Bible: Godson, Copyright, 442.

The Book of Common Prayer.

The claim of the Crown to an exclusive copyright in the Book of Common Prayer is also fully established: *Eyre* v. *Carnan, supra; Manners* v. *Blair, supra.*

The Universities and the Queen's printer.

By letters patent of the 13 Eliz. the Universities of Oxford and Cambridge have the right, concurrently with the Queen's printer, of printing, publishing, and selling copies of the Bible, the New Testament, and the Book of Common Prayer: *Universities of Oxford and Cambridge* v. *Richardson, supra.*

The statutes and other state documents.

The Crown has also the exclusive right of printing and publishing Acts of Parliament, Orders in the Privy Council, and other State proclamations and documents: *Eyre* v. *Carnan, supra; Stationers' Company* v. *Parker,* Skin. 233; *Roper* v. *Streater, ibid.* 234; *Nicol* v. *Stockdale,* 3 Swanst. 687. And the Universities of Oxford and Cambridge, as patentees of the Crown, have the right of printing and publishing Acts of Parliament: *Baskett* v. *University of Cambridge,* 1 W. Bl. 105. In *Baskett* v. *Cunningham, ibid.* 370, an injunction was granted at the suit of the King's printer (as patentee of copyright in the statutes) to restrain the defendant from printing and publishing a digest of the statutes arranged under alphabetical heads, with index and notes. But it is not generally considered that the publishing of particular statutes or extracts therefrom with *bonâ fide* notes amounts to an infringement of the copyright: see Maugham, 106; 2 Ev. Stat. 19; Shortt on Copyright, 53.

Lilley's Latin Grammar.

The copyright of the Crown in Lilley's Latin Grammar may be regarded as obsolete: it is said to be independent of prerogative, and to arise from the original publication of the work at the King's expense: Shortt on Copyright, 50.

Almanacs.

Crown copyright in almanacs is also practically obsolete, not having been asserted since the claim was affirmed in the case of the *Stationers' Company* v. *Carnan,* 2 W. Bl. 1004. As to nautical almanacs, see stat. 9 Geo. 4, c. 66, sect. 2.

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Law Reports.

The claim of the Crown to restrain the unauthorised publication of reports of judicial proceedings was affirmed in the cases of Rolle's Abridgement and Croke's Reports by the House of Lords in the reign of Charles the Second, and it is still maintained by the House of Lords as regards reports of trials on impeachment or indictment which take place before their Lordships: see *Lord Cardigan's Case*, Lords' Journals, vol. lxxiii., p. 46. As regards all other judicial proceedings the prerogative has long since fallen into disuse, and in two cases the Courts have recognised the claims of publishers of law reports to copyright in their publications: *Butterworth* v. *Robinson*, 5 Ves. 709; *Saunders* v. *Smith*, 3 My. & C. 711. The Courts, however, still assert and enforce the right of restraining the publication of reports of or comments on judicial proceedings, where such publication is calculated to prejudice the merits of the case, and defeat the ends of justice: *Roach* v. *Carnan*, 2 Atk. 469; *R.* v. *Clement*, 4 B. & Al. 218; *Tichborne* v. *Tichborne*, L. R. 7 Eq. 55, note; 15 W. R. 1072; 17 L. T. (N. S.) 5.

3. Assignment of Literary Copyright, and Agreements between Authors and Publishers.

Transfer of property in MSS.

Transfer of Property and Copyright in Literary Works Generally.]—Property in unpublished literary compositions is subject to the ordinary rules of law with regard to personal property. It will, therefore, pass by sale and delivery of the manuscript, like any other chattel: *Cocks* v. *Purday*, 5 C. B. 860. And where an author sells his unpublished work to another person, the purchaser may, on publication, register himself as proprietor of the copyright: *Lover* v. *Davidson*, 1 C. B. (N. S.) 182.

Whether MSS. pass to trustee in bankruptcy.

It has been said by a learned writer that trustees in bankruptcy are not entitled to the manuscripts of an author: see Copinger on Copyrights, 157. And it seems to have been assumed without question in argument in the case of *Atcherly* v. *Vernon* (10 Mod. at p. 530) that creditors cannot take an author's manuscripts in order that they may be printed for

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the payment of his debts, but there does not seem ever to have been an express decision on the point.

Copyright in published work passes to trustee in bankruptcy.

It is, however, quite clear that the statutory copyright of a bankrupt author in a published work will pass to his trustee without any written assignment: *Mawman* v. *Tegg*, 2 Russ. 392. See the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), sects. 54, 168; and see *Re Baldwin*, 2 De G. & J. 230. So the property in a newspaper will, on the bankruptcy of the proprietor, pass to his trustee: *Longman* v. *Tripp*, 2 B. & P. (N. R.) 67.

Devolution of copyright.

Copyright, being personal property, may be the subject of bequest, and if not bequeathed will, on the death of the person entitled to it, devolve on his personal representatives: *Thompson* v. *Stanhope*, Amb. 737; *Burnett* v. *Chetwood*, 2 Mer. 441, n.

Assignments, and agreements for assignment of copyright.

Statutory copyright cannot be assigned at law until it is actually in existence, that is to say, until after publication of the work: *Colburn* v. *Duncombe*, 9 Sim. 151; *Sweet* v. *Shaw*, 3 Jur. 217. But an agreement may be made before publication for a future assignment of the copyright, so as to vest an equitable title to the copyright in the assignee: *Leader* v. *Purday*, 7 C. B. 4; *Sims* v. *Marryat*, 17 Q. B. 281. It has been seen that where an author is employed by another person to compose a work in whole or in part, on the terms that the copyright shall belong to the employer, and is actually paid for his work, the copyright in the composition will vest in the employer without the necessity for any assignment: see *ante*, p. 683.

It has also been seen that the first right of publication is vested in the author, who may sell and assign his property in the work before its publication either absolutely or upon such conditions as he thinks fit as to the mode of publication, or otherwise, or even altogether prohibiting the publication.

Rights and liabilities of assignee of unpublished work.

Such assignment, if absolute, will pass all the author's proprietary rights therein to the assignee: see opinion of *Erle*, J., in *Jeffreys* v. *Boosey*, 4 H. L. C. 867. The assignee will thus have the exclusive right to use the manuscript as he thinks proper in as full a degree as the author himself, and may, as

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proprietor of the work, secure the copyright therein, and prevent its publication by other persons, including the author: *Lover* v. *Davidson*, 1 C. B. (N. S.) 182.

Publication in altered form.

It would seem that, in the absence of special contract, either express or implied, reserving to the author a qualified copyright, the assignee of an unpublished work is at liberty to alter or curtail it, and to publish it in an altered or mutilated form; and that no considerations as to the possible effect of such alteration on the author's reputation is a sufficient ground for an injunction to restrain such publication: *Cox* v. *Cox*, 11 Ha. 118; see also *Crookes* v. *Pelter*, 3 L. T. (N. S.) 225, which was a case in which the Court refused to restrain by injunction the proprietors of a newspaper from altering articles after revision by the editor.

Assignment of statutable copyright.

The author of a work who has neither written it for another, under circumstances which will vest the property therein in his employer, nor parted with such property before publication, is entitled to register his work (*ante*, p. 699) and obtain the statutable copyright for himself. Having done so he may freely dispose of the copyright, and the assignee will then, as such, be entitled to be registered as proprietor of the work.

Mode of assigning copyright.

Mode of Assigning Copyright.]—The stat. 5 & 6 Vict. c. 45, allows an assignment of copyright to be made by entry in the registry book of the Stationers' Company, in a certain form (*k*), which entry is exempted from stamp duty, and is declared to have the same force and effect as an assignment by deed (sect. 13). The adoption of the form of assignment is not compulsory; and the Act does not expressly require that every assignment should be by writing, although

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Entry of name and abode of assignee.

(*k*) There is a curious discrepancy between the form given in the schedule and the requirements of sect. 13, inasmuch as the section requires "the name and place of abode of the assignee" to be entered, but the form has no column in which these particulars can be entered. It will be prudent to add the particulars in making an entry of assignment, as otherwise the entry may be held to be defective: see *Wood* v. *Boosey*, L. R. 2 Q. B. 340, where the point was raised but not decided.

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the licence or consent of the proprietor of a copyright to any publication of the work is required to be by writing. In this particular the Act does not differ from the statute of Anne (*l*). The bare delivery of the copy by the author to be printed does not divest the right of the copy out of the author, but is only an authority to the printer to print that edition: *Knaplock* v. *Curle*, Vin. Ab. *Books*, 3. In an action for an infringement Lord *Ellenborough*, C. J., in *Power* v. *Walker*, 4 Camp. 8, said that the statute having required that the consent of the proprietor, in order to authorise the printing or reprinting of any book by any other person, should be in writing, the conclusion from it seemed almost irresistible, that the assignment must also be in writing; for if the licence, which is the lesser thing, must be in writing, *à fortiori* the assignment, which is the greater thing, must also be. And it has since been expressly decided that copyright will not pass by a verbal agreement: *Burnett* v. *Glossop*, 1 Sc. 621; *Clementi* v. *Walker*, 2 B. & C. 861; *Morris* v. *Kelly*, 1 Jac. & W. 481; *Leyland* v. *Stewart*, 4 Ch. D. 419.

Acquiescence.

An assignment will not be presumed unless there is clear evidence of intention. In *Latour* v. *Bland*, 2 Stark. 382, secondary evidence was given of the contents of a receipt, which had been destroyed, by which the plaintiff acknowledged to have received a sum of money as the price of the copyright; and it was proved that the plaintiff had said that he ought to have had more for the copyright; it was held, that there was no sufficient evidence of any assignment. In the case of *Moore* v. *Walker*, 4 Camp. 9, n., there was evidence that the author had admitted that he had parted with his interest, but without mentioning in what manner the transfer took place. In the same case it was held, that the acquiescence of the plaintiff in the publication of the work on a former occasion (*m*) afforded no presumption that he had authorised the publication complained of.

(*l*) Except that the statute of Anne required a licence to publish to be attested by two witnesses.

(*m*) The work was a musical piece printed from engraved plates, from which copies are taken from time to time, according to the

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In the case of *Rundell* v. *Murray*, Jac. 311, the plaintiff having composed or collected a variety of domestic receipts, offered to permit the defendant to publish them on his undertaking the expense, and giving her a few copies, which offer he accepted, and she delivered him the manuscript. The defendant made some alterations in the arrangement, and, having added a title-page, index, and engraving, published and entered the work as his property in Stationers' Hall. At the end of fourteen years the plaintiff filed a bill to restrain the defendant from publishing the work. His lordship refused to interfere, on the ground that the plaintiff had no equity. "It requires," he said, "I think, a great deal of ingenuity to argue, that because a general assignment in writing will endure only for fourteen years, that therefore, when a person makes a free gift by parol, without any statement with respect to its duration, it is to be considered as an effectual assignment for fourteen years, and that at the end of that period the Court is to treat it as a case in which a gift for fourteen years only was intended." There has often been great difficulty about granting injunctions when the plaintiff has previously, by acquiescing, permitted many others to publish the work; when ten have been allowed to publish, the Court will not restrain the eleventh. A court of equity frequently refuses an injunction, while acknowledging a right, where the conduct of the party complaining has led to the state of things that occasions the application.

Assignment need not be by deed.

An assignment of copyright need not be under seal, nor does it require attestation: see the opinion of *Wightman*, J., in *Jeffreys* v. *Boosey*, 4 H. L. C. at p. 841; and see *Cumberland* v. *Copeland*, 7 H. & N. 118. Any writing which clearly shows the intention of the parties to pass the copyright, will amount to a valid assignment. So copyright may be effectually

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demand. As a piece of music once printed never requires alteration, and as it is impossible to put any check on the possessor of the plate, the consequence is that there can be no sale of *editions* of engraved music—a licence to print from the plate amounts in effect to a disposal of the copyright.

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assigned by a letter: *Lacy* v. *Toole*, 15 L. T. (N. S.) 512. As to whether a receipt for the purchase-money will amount to an assignment: see *Colburn* v. *Duncombe*, 9 Sim. 151; *Cocks* v. *Purday*, 5 C. B. 860; *Sims* v. *Marryat*, 17 Q. B. 281; *Howitt* v. *Hall*, 6 L. T. (N. S.) 348; *Strachan* v. *Graham*, 16 L. T. (N. S.) 87; *Levy* v. *Rutley*, L. R. 6 C. P. 523.

Assignment for less than full term.

An assignment may be either of the registered proprietors' whole interest in the copyright, or any portion of such interest, and consequently may be for any period less than the full term during which the copyright will endure: see stat. 5 & 6 Vict. c. 45, sect. 13, *ante*, p. 681; and see *Davidson* v. *Bohn*, 6 C. B. 458.

Assignment partial in respect of locality.

The question whether an assignment of copyright, limited as regards locality, is valid has not yet been settled by any express decision. The point was raised in the House of Lords in the case of *Jeffreys* v. *Boosey*, 4 H. L. C. 815, in which Lord *St. Leonards* and also *Pollock*, C. B., and *Parke*, B. (in giving their opinions to the House), strongly expressed themselves in favour of the view that copyright is not divisible as to locality, and consequently not capable of an assignment partial in that respect: see also *D'Almaine* v. *Boosey*, 1 Y. & C. 288; *Cox* v. *Purday*, 5 C. B. 860; *Low* v. *Ward*, L. R. 6 Eq. 415; *Routledge* v. *Low*, L. R. 3 H. L. 100. Copyright in this country being the creation of statute and strictly local (*ante*, p. 697), this rule would not, of course, apply so as to preclude an author or his assignee, who had secured the copyright in this country and a similar right in a foreign country, from assigning these rights separately: there would, in this case, be no division of copyright as to locality, but only the assignment of one of two entire but distinct rights.

Assignment of share of copyright.

An assignment may be made of a share in a copyright, and may be registered accordingly; and, thereupon, the assignor and assignee will be co-owners of the copyright, according to the proportions assigned and retained respectively.

What does not amount to assignment.

A licence to publish is not an assignment of the copyright: *Reade* v. *Bentley*, 4 K. & J. 656; and see *post*, p. 710. Nor is an agreement to share

profits an assignment: *Stevens* v. *Benning*, 1 K. & J. 168; aff. 6 De G. M. & G. 223. **Assignment of Copyright.**

In the absence of express stipulation to the contrary the assignor of a copyright may continue to sell any number of copies printed up to the time of sale of the copyright, and remaining in his possession after the assignment: *Taylor* v. *Pillow*, L. R. 7 Eq. 418. Sale of stock in hand after assignment.

Agreements between Authors and Publishers.]—The validity, construction, and enforcement of these agreements depend upon the ordinary rules of law with regard to contracts respecting dealings with personal property. Agreements between authors and publishers generally.

Generally speaking, a valid agreement between an author and a publisher for bringing out a book may be made by parol, but it is in most cases advisable that such agreements should be reduced to writing, in order that the terms agreed upon may be clearly stated, and the contingencies likely to occur may be expressly provided for, so as to avoid, as far as possible, future disputes and misunderstandings; and even when this is done, the inevitable uncertainty at the commencement of a literary work of any importance, as to the amount of time and labour which will be required in its preparation, on the one hand, and as to the success of the work on the other, must often make great demands on the mutual forbearance and good feeling of the parties.

If the agreement is one which "is not to be performed within the space of one year from the making thereof," no action can be brought upon it, unless the agreement itself, "or some memorandum or note thereof," shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised: see sect. 4 of the Statute of Frauds (29 Car. 2, c. 3) (*n*). Agreement not to be performed within a year.

The consideration must be stated on the face of

(*n*) For an examination of the effect and operation of this section: see *ante*, tit. AGREEMENTS, Vol. I., pp. 303 *et seq.* And as to the admissibility of parol evidence to explain or control written instruments; see *ibid.* at p. 344 *et seq.*

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the document: *Wayne* v. *Warlters*, 5 East, 10; *Ex parte Minet*, 14 Ves. 190; *Saunders* v. *Wakefield*, 4 B. & Al. 595: and see further, as to statement of consideration, *ante*, tit. "AGREEMENTS," Vol. I., pp. 325—330.

Letters.

The agreement, provided that the requirements of the Statute of Frauds are satisfied by writing and due signature, need not be a formal legal instrument. Thus letters have often been held to constitute a valid contract. "The same construction must be put upon a letter that would be applied to the case of a more formal instrument; the only difference being, that a letter, or a correspondence, is generally more loose and inaccurate in respect of terms, and creates a greater difficulty in arriving at a precise construction:" per Lord *Eldon*, C., in *Kennedy* v. *Lee*, 3 Mer. at p. 451: see also *Thomas* v. *Blackman*, 1 Coll. 301; *Phillimore* v. *Barry*, 1 Camp. 513; *Johnson* v. *Dodgson*, 2 M. & W. 653. And a letter signed by one of the parties to the agreement, and addressed to a third person, containing a reference to the agreement, has been held to be a sufficient "memorandum or note," to satisfy the statute and bind the writer: *Watford* v. *Beazley*, 3 Atk. 503; *Owen* v. *Thomas*, 3 My. & K. 353; *Rose* v. *Cunninghame*, 11 Ves. 550; *Goodwin* v. *Fielding*, 4 De G. M. & G. 90; *Gibson* v. *Holland*, L. R., 1 C. P. 1.

Assignment or licence.

The agreement should clearly indicate whether it is intended to operate as an assignment of the author's copyright to the publisher, or merely as a licence to publish (*o*): see *Stevens* v. *Benning*, 1 K. & J. 168; *S. C.*, aff. 6 De G. M. & G. 223; *Reade* v. *Bentley*, 3 K. & J. 271. Where joint authors of a book entered into an agreement with a firm of publishers, whereby the firm were to publish the

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Distinction between assignment of copyright and licence to publish.

(*o*) An assignment of the copyright will vest the exclusive ownership of the work or publication in the assignee, but a mere licence to publish confers on the licensee no proprietary rights in the copyright: see *Taylor* v. *Neville*, 38 L. T. 50.

Licence not assignable.

If there is a mere licence to publish, the contract is merely personal between the parties, and the benefit of it cannot be assigned without the author's consent: *Hole* v. *Bradbury*, 12 Ch. D. 886.

book and bear all losses, but net profits, if any, were to be divided between the authors and the publishers, it was held that the agreement was merely personal, and that the benefit of it was not assignable by the publishers without the consent of the authors: *Hole* v. *Bradbury*, 12 Ch. D. 886.

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Agreements are frequently made between the proprietor of the copyright and his publisher to sell to the latter a limited interest in the copyright. When a book is printed from moveable types, a number of impressions corresponding to the anticipated demand is taken off, and then the types are distributed, so that no additional copies can be obtained without incurring the heavy expense of recomposing the types. This course is always pursued, except in the case of very small works, or under very peculiar circumstances, and is rendered necessary by the great value of the types and the framework in which they are bound together, which constitute too important a part of the printer's capital to be allowed to remain idle for any length of time. In the course of printing a work of any size, the same types are used repeatedly for different parts of the work, the earlier sheets being worked off, and the types distributed and recomposed to form those which follow. The entire number of impressions taken from one setting of the types is called "an edition;" and it is well understood in the trade, that the right to an edition of a work means the right to all of the impressions so taken from one setting of the types, whether the impression is to be printed hereafter, or has already been taken off. In contracts intended to confer rights of this kind, it is usual to specify the number of copies of which the edition shall consist; and when this is not done, a difficult question may arise as to the limits within which the grantee of an edition may be confined. It is a condition so necessarily implied in every grant of an edition of a book, as to be seldom if ever expressed, that the grantor shall not create and sell a single new copy of the work until the last copy of the edition has been sold by the grantee; or, as it is expressed, until the work is out of print. Until the

Contracts between authors and publishers. Sale of "an edition."

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edition is sold off, the grantee has a qualified exclusive copyright in the work, and is entitled, at least in equity, to protection from all infringements, whether by the proprietor of the reversion, or by strangers: *Sweet* v. *Cater*, 5 Jur. 68. It has not been distinctly decided whether the purchaser of a single edition can bring an action in his own name only for a piracy. It should seem that he can at least recover special damages upon the same principle that a licensee of a patent can recover damages which he proves, although he cannot sue for an infringement merely upon his title: *ante*, p. 662. There is a difference between the case under consideration and that of a licenser of a patent, namely, that the interest of the proprietor of an edition is absolute and exclusive during the time, whereas that of an ordinary licenser is not, and he is as liable to be injured by acts authorised by the patentee, and of which he cannot complain, as by unauthorised infringements.

Sometimes an edition is divided amongst several persons, or the proprietor sells a large proportion of the impression to one person, with the intention that he shall supply, not only his private customers, but members of the trade. In these cases there is generally some agreement that neither party shall sell copies at less than a stipulated price. In the case of *Benning* v. *Dove*, 5 Car. & P. 427, the effect of a special agreement of this nature came in question. The defendant having printed a work, sold 300 copies of it to the plaintiff at 40*s.* per copy, binding himself not to sell copies to others in quires under 48*s.* per copy, or in single copies under 50*s.*, until the plaintiff's copies were sold, or he should consent. In his letter which constituted the agreement, the defendant said, "I do not expect you to sell under 48*s.* and 50*s.*, but do as you like." After the plaintiff had sold some of his copies, he went into partnership with C., and brought the copies into the joint-stock at the cost price; he also sold some copies under the stipulated prices. It was held in an action against the defendant for selling at prices below those agreed upon, that the circumstances

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constituted no defence; but the jury were allowed to consider, on the question of damages, the effect of the plaintiff's underselling upon the market price.

Specific performance of contracts by authors.

Clarke v. *Price.*

An agreement to write a book cannot be enforced in equity. In the case of *Clarke* v. *Price,* 2 Wils. C. C. 157, the defendant entered into an agreement with the plaintiffs to write reports of cases in the Court of Exchequer, to be published periodically, on the terms of sharing the profits; and it was agreed that the plaintiffs should be at liberty to relinquish the undertaking if they should think it advisable. As the first and second volumes were published, the defendant assigned the copyright in them to the plaintiffs. Afterwards, in 1817, the terms of the arrangement were altered, and the following agreement was executed:—"Memorandum, Mr. Price agrees with Messrs. Clarke to receive for his interest in the agreement for the Exchequer Reports, dated 27th of April, 1814, commencing at the third volume, the sum of, &c. Mr. Price, agrees to give any further assignment of the copyright and future interest to Messrs. Clarke at their expense." The defendant having subsequently entered into an agreement with other publishers, who were made defendants, to report the cases in the Exchequer, the bill was filed, praying to have a specific performance of the agreements of 1814 and 1817, by permitting the plaintiffs to print and publish the reports of cases in the Exchequer so long as he should continue to compose and write them, upon the terms of those agreements, and by executing an assignment of the copyright; and also praying an injunction: *Morris* v. *Coleman* (*infra*) was relied upon. Lord *Eldon,* C., refused to interfere. His Lordship said, "I have no jurisdiction to compel Mr. Price to write reports for the plaintiffs. I cannot, as in the other case, say that I will induce him to write for the plaintiffs by preventing him from writing for any other person, for that is not the nature of the agreement. The only means of enforcing the execution of this agreement would be to make an order compelling Mr. Price to write reports for the plaintiffs, which I have not the

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means of doing. If there be any remedy in this case, it is at law. If I cannot compel Mr. Price to remain in the Court of Exchequer for the purpose of taking notes, I can do nothing. I cannot indirectly, and for the purpose of compelling him to perform the agreement, compel him to do something which is merely incidental to the agreement. It is also quite clear that there is no mutuality in this agreement." In *Morris* v. *Coleman*, 18 Ves. 437, where Morris, Colman, and other persons were engaged in a partnership in the Haymarket Theatre, and Colman had entered into an agreement that he would not write for any other theatre, the Court, not being able to compel him to write for the Haymarket Theatre, did the only thing in its power—it induced him indirectly to do one thing by prohibiting him from doing another. So where the plaintiffs had purchased the copyright in a periodical work, and the right to use the name of the defendant in its publication, and the defendant had expressly agreed to devote his whole time to the service of the plaintiffs, and not to engage in other business, it was held that the defendant must be restrained from advertising a rival work: *Ward* v. *Beeton*, L. R., 19 Eq. 207.

Remedy for breach of contract by author.

The only remedy, therefore, in most instances, for the breach of a contract to write or edit a book is by action for damages for breach of contract. And although by the agreement the profits are to be divided, the bookseller may sue the author for not supplying the manuscript, for the subject of the action is not the partnership profits: *Gale* v. *Leckie*, 2 Stark. 107. The terms of a contract of authorship must be strictly followed; an author or a publisher may approve of one form of publication and object to another, and therefore the stipulated form cannot be altered without their mutual consent. Thus, when the plaintiff agreed for a certain sum to write an article, to appear among others in a work called the "Juvenile Library," and before he had completed the article, or any part of it was published, the publisher discontinued the work: it was held, that the author was not bound to complete his

Contract to write a book for one purpose cannot be varied by the publisher, by publishing the book in a different form.

article in order that it might be published in a separate form for general readers, but was entitled to a reasonable compensation for the labour he had bestowed on it: *Planché* v. *Coulburn*, 8 Bing. 14. Where a book has once been published, however, the assignee of the copyright may deal with it as he pleases, provided he does nothing that may be detrimental to the author's reputation; see *infra*.

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An author may bind himself not to write on a given subject, or to write only for a particular person. See *Barfield* v. *Nicholson*, 2 S. & St. 1; *Morris* v. *Colman*, 18 Ves. 437; *Ward* v. *Beeton*, L. R., 19 Eq. 207.

Contract not to write on given subject, &c.

Specific performance of an agreement for the sale of personal chattels cannot generally be enforced in equity. But a copyright is not such a chattel as comes within this rule; and even though personal chattels (such as stereotype plates, printed sheets, &c.) are included in the contract for sale of an existing copyright, a court of equity will entertain a suit for specific performance: *Thombleson* v. *Black*, 1 Jur. 198.

Specific performance of agreement to assign copyright.

Where an author has sold his copyright, the assignee is liable to an action for damages if he publish an edition of the work purporting to be prepared by the author, and so inaccurately performed as to be detrimental to the author's reputation for skill or knowledge, at least if such reputation is of pecuniary importance to him. This was decided in the case of a law-book originally composed by a barrister, from whom the defendant purchased the copyright, and published an edition prepared by another person, and so incorrectly as to be detrimental to the reputation of the author, by whom, as the jury found, the edition purported to have been prepared. The title-page did not contain the name of the actual editor, and it contained the words "third edition," followed by the name of the author: *Archbold* v. *Sweet*, 5 Car. & P. 219. Lord *Tenterden*, C. J., held, that, in the case at least of a law-book, the question as to the alleged errors and their effect on the reputation of the plaintiff was for the Court, but the question whether the edition pur-

Edition falsely purporting to be by author.

Agreements with Publishers.

ported to be prepared by him was for the jury. This last position may well be doubted. The question would seem to be one of construction merely, and the construction of written instruments generally (as, for instance, of the title and specification of a patent) is for the Court, *ante*, p. 626, note (*i*).

Alterations in MS. before publication.

The Court will not grant an injunction to restrain a publisher from printing, publishing, and selling a work composed by an author in an altered or mutilated shape: *Cox* v. *Cox*, 11 Hare, 119: see *ante*, p. 705.

No specific performance of agreement to publish, *semble*.

So it would seem very doubtful whether specific performance of an agreement to publish a book can be enforced against a publisher. Where publishers agreed with an author to publish a work by him at their own risk and expense, on the terms of dividing profits, and that if another edition should be required, the author should make the necessary alterations and additions, and the publishers should publish the subsequent edition on the same terms, *Knight Bruce*, L. J., said that he did not see that the duties were on either side of such a nature that their performance specifically could be enforced: *Stevens* v. *Benning*, 6 De G. M. & G., at p. 229: see also the remarks of *Jessel*, M. R., in *Warne* v. *Routledge*, L. R., 18 Eq., at p. 499.

Remedy against publisher by damages.

The remedy for non-publication would, therefore, seem to be by action for damages, or for work and labour done; and it would seem that a reasonable remuneration for work and labour done will generally be the full measure of the damages, and that the Court will not entertain any consideration as to the loss to the author's reputation by reason of his work being wholly or partially left unpublished: *Planché* v. *Coulburn*, 8 Bing. 14.

Proportion of remuneration for work interrupted by author's death.

It was held by the Scotch Court of Session, in *Constable* v. *Robinson's Trustees* (one judge dissenting), that where the publication of a work intended to be brought out in parts was interrupted by the author's death, his personal representatives were entitled to a proportionate part of the stipulated remuneration in respect of the work actually done: see 14 Fac. Dec. 166, 1 June, 1808. But

in such cases, agreements between authors and publishers should expressly provide for the contingency.

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4. Infringement of Copyright and the Remedy (*p*).

In reading the cases upon this, and, indeed, upon every other branch of the law of copyright, the general rule of the Court never to interfere by injunction, unless the legal title is clear, should be borne in mind, as it is obvious that the cases in which an injunction has been refused, are by no means conclusive against the legal title of the plaintiff; while, on the other hand, the cases in which the injunction has been granted at once, afford a strong presumption in favour of such legal title.

The stat. 5 & 6 Vict. c. 45, defines copyright as "the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is therein applied;" consequently the right can only be infringed by such printing or multiplication of copies. Copyright in a book itself will not be infringed by reason of its contents being recited from memory (*Coleman* v. *Wathen*, 5 T. R. 245; *Murray* v. *Elliston*, 5 B. & Al. 657), or read aloud in whole or in part (*Tinsley* v. *Lacy*, 1 H. & M. 747), or dramatised and represented on the stage (*Coleman* v. *Wathen*, 5 T. R. 245; *Reade* v. *Conquest*, 9 C. B. (N.S.) 755). But, on the other hand, if copies of a work in which literary copyright exists are multiplied, there will be an infringement, although the copies are not sold, but circulated gratuitously: *Novello* v. *Sudlow*, 12 C. B. 177.

What resemblance amounts to a piracy.

The question as to what imitation or copying amounts to piracy is necessarily incapable of precise determination, and must depend very much on the nature of the works and other circumstances. "When

(*p*) Although the above subject may, perhaps, seem to be treated here at greater length than is strictly necessary in connection with conveyancing, it has been thought well to retain in a somewhat condensed form, and with the addition of later decisions, the valuable information collected by the learned and able editor of the last edition of this work.

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it comes to a question of quantity," said Lord *Cottenham*, C., in the case of *Bramwell* v. *Halcomb*, 3 My. & C. 738, it must be very vague. One writer might take all the vital part of another's book, though it might be but a small proportion of the book in quantity. It is not only quantity but value that is always looked to. It is useless to refer to any particular cases as to quantity." So, Lord *Eldon*, in *Wilkins* v. *Aikin*, 17 Ves. 422, says, "The question, upon the whole, is, whether this is a legitimate use of the plaintiff's publication in the fair exercise of a mental operation, deserving the character of an original work." See also *Mawman* v. *Tegg*, 2 Russ. 394. And *Kindersley*, V.-C., in *Murray* v. *Bogue*, 1 Drew. 369, stated the test of piracy of a book to be whether there was "such an extraction from it as comes up to an extraction of the vital part."

Such being the necessarily vague and indeterminate nature of the subject, little more can be said upon it beyond a statement of the cases.

Carey v. *Longman.*

In *Carey* v. *Longman*, 1 East, 358, an action was successfully brought for an infringement, by copying a road-book, compiled by the plaintiff from another book, with additions and alterations. The printed work of the plaintiffs was used by the defendants at the press; some of it clipped with scissors, and a few MS. additions here and there—some of them merely colourable. See *Trusler* v. *Murray*, 1 East, 362, n.

Sayer v. *Moore.*

In *Sayer* v. *Moore*, 1 East, 360, n., the action was brought under the statute 17 Geo. 3, c. 57, for a piracy of four sea-charts, prepared and improved by the plaintiffs from all the charts and maps extant, and from manuscript and printed journals, and observations of travellers. The defendant had united them into one chart, and copied the engravings with a few alterations, and, as it appeared, a correction of the projection. The defendant obtained a verdict. Lord *Mansfield*, C. J., in directing the jury, said the question was whether the alteration was colourable or not. "There must be such a similitude as to make it probable and reasonable to suppose that one is a transcript of the other, and nothing more than a

transcript. In the case of prints, no doubt, different men may take engravings from the same picture. The same principle holds with regard to charts; whoever has it in his intention to publish a chart may take advantage of all prior publications. There is no monopoly of the subject; but, upon any question of this nature, the jury will decide whether it be a servile imitation or not."

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Great freedom has been used in the compilation of encyclopædias and dictionaries of general knowledge by copying from distinct treatises on particular subjects, on the notion that so large and various a work would not interfere with the sale of the particular book. It has, however, properly been held, that encyclopædias stand on the same footing as other works, and while the copyright in articles originally written for them is equally protected (*Mawman* v. *Tegg*, 2 Russ. 385, *et infra*), they have no peculiar privilege of piracy. Thus, in *Roworth* v. *Wilkes*, 1 Camp. 94, the copying into the Encyclopædia Londinensis of 75 pages out of 118 of the letter-press, and several of the plates, of a treatise on Fencing, was held to be a piracy. The Encyclopædia was sold in eightpenny parts. Lord *Ellenborough*, C. J., said, "This action is brought for prejudice to a work vested in the plaintiff; and the question is, whether the defendant's publication would serve as a substitute for it? A review will not in general serve as a substitute for the book reviewed, and even there, if so much is extracted that it communicates the same knowledge with the original work, it is an actionable violation of literary property. The intention to pirate is not necessary in an action of this sort; it is enough that the publication complained of is in substance a copy whereby a work vested in another is prejudiced. A compilation of this kind may differ from a treatise published by itself; but there must be certain limits fixed to its transcripts—it must not be allowed to sweep up all modern works, or an encyclopædia would be a recipe for completely breaking down all literary property."

Encyclopædias and general dictionaries.

Roworth v. *Wilkes.*

In *Campbell* v. *Scott*, 6 Jur. 186, an injunction

Campbell v. *Scott.*

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Selections from living authors.

was granted against the publication of a large volume, called "The Book of the Poets, or Modern Poets of the 19th Century." It contained selections from the works of forty of the most eminent poets of that period, and out of 790 pages 32 consisted of original criticisms and biographical sketches. The plaintiff complained of eighteen pages which contained six whole poems, and several selected passages. *Shadwell*, V.-C., said, "I cannot think that this can be looked upon as a book of criticism. If, indeed, there had been notes appended to the pages in succession, pointing out where and from whom Mr. Campbell borrowed certain illustrations, then I might view this work in a different light; but it seems to me to contain but a short general essay, and then this vast collection of pirated matter, which, in fact, forms the valuable part of the book."

Scott v. *Stanford.*

In *Scott* v. *Stanford*, L. R., 3 Eq. 718, the plaintiff, who was clerk and registrar of the Coal Market of the City of London, had the exclusive privilege of publishing, under the authority and from the books of the Corporation, but for his own benefit, statistical returns of the quantities of coal imported into London; such returns were issued periodically to subscribers of £3 3*s.* per annum, at a considerable profit to the plaintiff. The defendant was the publisher of a work entitled "Mineral Statistics of the United Kingdom, in which, under the head of "Statistics as to Coal," were incorporated the returns compiled by the plaintiff for several preceding years, the source from which the information was taken being acknowledged. The information thus taken from the plaintiff's returns formed about one-third of the defendant's work, which was sold at 2*s.* 6*d.* a copy. It was held that there had been an appropriation to such an extent as to entitle the plaintiff to an injunction, notwithstanding that the statistics had been taken in perfect good faith and with the fullest acknowledgment of the source from which they were derived. *Wood*, V.-C., in his judgment in that case, quoted with approval the following words used by Mr. Justice *Story*, in *Folsom* v. *Marsh*, 2 Story, at p. 116: "We must, in de-

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ciding questions of this sort, look to the nature and objects of the selections made, the quantity and value of the material used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects of the original work." See also *Bradbury* v. *Hotten*, L. R. 8 Ex. 1.

Reviews.

Extracts for criticism.

In reviews a certain licence in the extracting of passages from new works is allowed, but there is a limit in this as in every other case: see *Dodsley* v. *Kinnersly*, Ambl. 403, *infra*, p. 656, and *per* Lord *Ellenborough* in *Roworth* v. *Wilkes*, *ante*, p. 719. In *Whittingham* v. *Wooller*, 2 Swanst. 428, the defendant having, in two numbers of a periodical work of theatrical criticism, inserted detached extracts to the extent of six or seven pages from a farce, the property of the plaintiff, containing forty pages, interspersed with criticism, a bill for a perpetual injunction, and an account of the profits, was dismissed with costs.

Whittingham v. *Wooller*.

Bell v. *Whitehead*.

In *Bell* v. *Whitehead*, 3 Jur. 68, the plaintiffs had published in "The Monthly Chronicle" an article entitled "The Great Western Railway Enquiry," occupying nineteen pages; the defendant had extracted four pages and a half from this, and published it in "The Railway Times," a weekly paper, with animadversions. Lord *Cottenham*, C., in dissolving an injunction which had been obtained, made these observations: "It is difficult to prescribe the legitimate mode of extracting what is published in other publications, and to lay down the rule of quantity; but it is necessary for a party to be able to substantiate the value of the matter extracted before he comes for an injunction. It would be injurious to the public to limit the right of discussing questions of this kind, and for that purpose to make necessary extracts; and the question is, whether this was inserted for purposes of criticism, and for the purpose of supporting such observations as the editor thinks proper to make. That was the ground proceeded on in *Whittingham* v. *Wooller*, and is acted on in such publications as the Edinburgh and Quarterly Reviews, and, when fairly acted on, the result most probably is, that the sale is extended by the notice, when

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not given for the purpose of superseding the work itself; and, if I were to entertain this application, how could I exclude the similar application of one newspaper seeking to restrain the sale of an article taken by another. It is impossible to say there is any value in the nature of property in what is here inserted; the question is too minute, as a question of property or value, how far, in point of value, it interferes with the sale of the Monthly Chronicle (*q*). The injunction is not to depend altogether on a question of account, but to what value the question, in point of utility, is to be carried." See *Wyatt* v. *Barnard*, 3 Ves. & B. 77, that the usage among publishers of periodicals to take articles of certain kinds from each other is no excuse for piracy.

Usage of publishers.

Abridgments.

It has often been laid down that there may be a fair abridgment of a work; but the test of fairness in an abridgment has never been pointed out. In an *Anonymous case*, in Lofft. 775, upon a bill praying an injunction against an abridgment of Dr. Hawkesworth's "Voyages," Lord *Apsley*, C., was of opinion that this abridgment was not any violation of the author's property; that to constitute a true and proper abridgment, the whole work must be preserved in its sense, and then the act of abridgment is an act of understanding employed in compressing a large work into a smaller compass, and rendering it less expensive and more convenient, both to the time and use of the reader, which made an abridgment in the nature of a new and meritorious work; and that an abridgment, when the understanding is employed in retrenching unnecessary and uninteresting circumstances, which rather deaden the narration, is not an act of plagiarism upon the original work.

This reasoning is not very conclusive, and it is doubtful whether it would be acted upon at the present day. An abridgment of the reports of Vesey, jun., would have been, perhaps, as useful and

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(*q*) As to the minuteness of the injury, see also *Fradella* v. *Weller*, 2 Russ. & M. 247.

meritorious a work of that kind as could be performed, yet the attempt was stopped by injunction, the Court thinking it a mere colour for piracy: *Vesey* v. *Sweet*, 5 Ves. 709, n. So, in *Butterworth* v. *Robinson*, ibid., an injunction went against an abridgment of the "Term Reports"; and in *Gyles* v. *Wilcox*, 2 Atk. 142, against an abridgment of Hale's "Pleas of the Crown." See also *Bell* v. *Walker*, 1 B. C. C. 451; *Read* v. *Hodges*, cit. 3 Swanst. 679. **Infringement of Copyright.**

In *Carey* v. *Kearsley*, 4 Esp. 167, the plaintiff alleged a piracy of his road-book by the defendant in a book of the same kind. Lord *Ellenborough* said, "That part of the work of an author is found in another, is not of itself piracy or sufficient to support an action; a man may fairly adopt part of the work of another; he may so make use of another's labours for the promotion of science and the benefit of the public; but having done so, the question will be, was the matter so taken used fairly with that view and without what I may term the *animus furandi?*" See to the same effect: *Mawman* v. *Tegg*, 2 Russ. 401; *Spiers* v. *Brown*, 6 W. R. 352. *Animus furandi.* *Carey* v. *Kearsley.*

In *Scott* v. *Stanford*, L. R. 3 Eq. 718 (stated *ante*, p. 720), a Mr. Hunt set out in his book (which was published by the defendant) certain statistics taken from a work of the plaintiff, acknowledging the source from which the information was derived, by the following heading prefixed to the statistics: "Coal brought by sea, railway, and canal, within the London districts since 1854, and entered at the Coal Market, compiled from the returns published by the authority of the Corporation of London by James R. Scott, Esq., clerk and registrar of the Coal Market;" and this point was strongly pressed on the Court on behalf of the defendant: but, *Wood*, V.-C., in granting the injunction prayed for, said (at p. 723): "It is urged that this is a case in which no *animus furandi* can be found on the part of Mr. Hunt, who has taken these statistics in perfect good faith, and with the fullest acknowledgment of the source from which they are derived. But if, in effect, the great bulk of the plaintiff's publication, a *Scott* v. *Stanford.*

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large and vital portion of his work and labour, has been appropriated and published in a form which will materially injure his copyright, mere honest intention on the part of the appropriator will not suffice, as the Court can only look at the result and not at the intention of the man's mind at the time of doing the act complained of, and he must be presumed to intend all that the publication of his work effects." So, in *Campbell* v. *Scott*, 11 Sim. 31, where the defendant had published a book of selections from the works of modern poets, including extracts from poems composed by, and the copyright in which was vested in the plaintiff, *Shadwell*, V.-C., said: "It is said there was no *animus furandi;* but if A. takes the property of B., the *animus furandi* is inferred from the act."

Wilkins v *Aikin.*

Fair use of existing works.

In *Wilkins* v. *Aikin*, 17 Ves. 422, the question was whether the defendant in "An Essay on the Doric Order of Architecture," had made too free a use of the letter-press of the plaintiff's work, called "The Antiquities of Magna Græcia," and Lord *Eldon*, in dissolving an injunction and directing an account to be kept and an action to be brought, said: "There is no doubt that a man cannot, under the pretence of quotation, publish either the whole or part of another's work; though he may use what is in all cases difficult to define—fair quotation. In the case of maps, one man publishes the map of a county, another man, with the same design, if he has equal skill and opportunity will, by his own labour, produce almost a *fac simile*, and has a right to do so; but, from his right through that medium, was it ever contended that he might copy the other map? Suppose a publication, professing to be an account of the improvement of maps of the county of Middlesex, compiling the history of all the maps of it ever published, pointing out the peculiarities belonging to them, and giving copies of them all, as well those the copyrights of which have expired, as those of which it was subsisting: it is not easy to say with certainty what would be the decision upon such a case. If it was a fair history of the maps of the county which had been published, and the publica-

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tion of the individual map was merely an illustration of that history, that is one way of stating it; but if a jury could perceive the object to make a profit by publishing the map of another man (*r*), that would require a different construction. The slightest circumstances, therefore, in these cases, make the most important distinction:" see *Lewis* v. *Fullarton*, 2 Beav. 6, *ante*, p. 636; *Matthewson* v. *Stockdale*, 12 Ves. 270; *Longman* v. *Winchester*, 16 Ves. 269; *Barfield* v. *Nicholson*, 2 S. & St. 1. In *Carnan* v. *Bowles*, 1 Cox, 283; 2 B. C. C. 80, a case of road-books, the Master was directed to inquire whether the books were the same, or whether the defendant's book differed from the plaintiff's so as to render it a new and original work in any and what particular.

Saunders v. *Smith.*

In the case of *Saunders* v. *Smith*, 2 Jur. 491, the plaintiffs possessed the copyright of certain law reports, and complained of a piracy by the printing by the defendant in his "Selection of Leading Cases in various Branches of the Law" (consisting of one volume of 305 pages, and another volume intended to be published), of cases taken at full length from those reports; the cases taken in the volume then published, amounting in number to twenty-four, and occupying 182 pages. The rest of the defendant's work consisted of three other cases taken from reports not belonging to the plaintiffs, and copious and elaborate original notes on the legal subjects involved in the cases. Sir *L. Shadwell* refused an injunction, and said: "It appears to me that there is a great difference between publishing a few cases from fifty volumes, with notes and comments to show the stream and course of the law, and the manner in which it has been modified by successive decisions, and publishing the bare cases themselves. It is difficult to show that any loss has been or will be sustained by the plaintiffs. They apply to this

(*r*) In some cases it has been held that the intention or *animus furandi* of Lord *Ellenborough* is nothing; the effect upon the plaintiff's property is the material question, and this seems to be the correct view: see *ante*, p. 724.

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Court on the ground of irreparable injury, and the decision of the Court will be with regard to the injury sustained. Now the Court does not interfere to prevent trivial and insignificant trespasses." His honour, though laying the most stress on the smallness of the injury, censured the conduct of the plaintiffs in lying by when they knew the nature of the work intended, and allowing the defendant to print and publish it without remonstrance, and on this ground the decision was affirmed by Lord *Cottenham*, C., who declined to express any opinion as to the question of amount: see *Bell* v. *Whitehead*, *ante*, p. 721; *Bailey* v. *Taylor*, 1 Russ. & M. 73.

Smallness of amount taken where the works are similar in object.

But where the works are of the same nature, copying is not allowed to the same extent as it is between books which, having different objects, cannot be expected materially to interfere with each other. For instance, where two contemporary periodical publications profess to report cases on points of law, and one copies a few cases from the other, that may be sufficient to found an injunction: *Sweet* v. *Shaw*, 3 Jur. 215; *Sweet* v. *Maugham*, 4 Jur. 456, 479.

Directories, &c.

So in the case of a directory or guide-book containing information generally accessible, and which must necessarily be identical with the information given by other works, so far as correctly given, the compiler is not at liberty to copy such information out of previous works; he must obtain his information by independent research, and is only at liberty to refer to previous works for the purpose of verifying or correcting his own information: *Kelly* v. *Morris*, L. R. 1 Eq. 697; see also *Longman* v. *Winchester*, 16 Ves. 271; *Morris* v. *Ashbee*, L. R. 7 Eq. 34; *Cox* v. *Land and Water Journal Co.*, L. R. 9 Eq. 324; *Morris* v. *Wright*, L. R. 5 Ch. 279. An author is at liberty to use passages from the works of old writers, though such use may have been suggested by the work of another author on the same subject, and cited therein: *Pike* v. *Nicholas*, L. R. 5 Ch. 251.

Cox v. *Morris*.

Rule when the part copied is

The proportion which the pirated matter bears to

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the rest of the defendant's work is also material; if it be a large part of that the Court will interfere, although it forms but a small proportion of the plaintiff's. Thus, in the case of *Kelly* v. *Hooper*, 4 Jur. 21, the plaintiff was entitled to the copyright of "The Post-office Directory," sold at 6*s*. 6*d*. and 9*s*. 6*d*., containing information respecting the Post-office, compiled from public documents, which formed a very minute portion of the entire work. The defendant published the whole of this information in a sheet called "The Post-office Almanack," sold for 6*d*., and of which it formed the principal part; it was held that the plaintiff was entitled to an injunction: see *Macklin* v. *Richardson*, Amb. 694; and *Scott* v. *Stanford*, L. R. 3 Eq. 718, stated *ante*, p. 720.

large in proportion to the defendant's work, though but a small part of the plaintiff's. *Kelly* v. *Hooper*.

Translations of foreign works.

An original translation into English of a foreign work may be the subject of copyright, and the publication of unauthorised copies of the translation will be an infringement of such copyright; so in *Wyatt* v. *Barnard*, 3 Ves. & B. 78, an injunction was granted to restrain the piracy of certain articles translated from foreign works which had previously appeared in this country in a magazine of which the plaintiff was the proprietor. But it seems clear that the copyright in the original translation would not be infringed by an independent translation of the same foreign work (*s*). A retranslation into English of a foreign translation of an English work would be an infringement of the copyright in the latter, and ignorance on the part of the retranslator that the foreign work was itself a translation would afford no defence: *Murray* v. *Bogue*, 1 Drew, 353. If a work in a foreign or dead language is published in this country and an English copyright is acquired therein, it is considered that, at the present day, a translation of the work into English would be held to be an infringement of the copyright. In *Barnett* v. *Chetwood*, cit. 2 Mer. 441, note, Lord *Macclesfield*, C.,

(*s*) There is no reported decision in the English Courts on this point, but see the observations of Mr. Justice *Story* in *Emerson* v. *Davis*, 3 L. T. Rep. 780.

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is reported to have expressed a different opinion; but the report is apparently somewhat apocryphal, and his Lordship's decision was grounded on principles which would not now be followed. If a foreign work is itself protected by copyright under the International Copyright Acts, such copyright will be infringed by translation no less than by publication in the original language: see stat. 49 & 50 Vict. c. 33, s. 5; and see *post*, p. 774.

Music.

Musical compositions stand in a peculiar position with respect to the question of infringement. As to simple vocal music there is not much difficulty. The air or melody has a distinct character, and is incapable of "colourable alteration" by transposition of key or otherwise. Harmonised music, on the other hand, founded on airs which are open to the public, is susceptible of considerable alteration in form without any material change in the effect; and, while there are many "equivalent harmonies" which may often be used indifferently and are available for the purpose of colourable variation, the rules of composition are so far fixed that it would be difficult to say that the coincidences between the original and the pirated copy were not the necessary results of the rules of music instead of being an indication of piracy. No case is reported in which this question has arisen, but it has been decided, with respect to music of which the subject as well as the harmonies are private property, that any publication of the air, in whatever form and however accompanied, is a piracy.

D'Almaine v. *Boosey.*

Thus in *D'Almaine* v. *Boosey*, an injunction was granted restraining the defendant from publishing two sets of quadrilles and a set of waltzes, professing to have been, and in fact having been, composed by Musard abroad, upon airs in Auber's opera of "Lestocq," the copyright of which in England belonged to the plaintiffs. The plaintiffs had also published two sets of quadrilles arranged from the same opera. Lord *Lyndhurst*, C. B., said:—"It is a nice question what shall be deemed such a modification of an original work as shall absorb the merit of the original in the new composition. No doubt such a modification may be allowed in some cases, as in that of an

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abridgment or a digest; such publications are in their nature original. Their compiler intends to make of them a new use; not that which the author proposed to make. Digests are of great use to practical men, though not so, comparatively speaking, to students. The same may be said of an abridgment of any study; but it must be a *bonâ fide* abridgment; because if it contain many chapters of the original, or such as made that work most saleable, the maker of the abridgment commits a piracy. Now, it will be said that one author may treat the same subject very differently from another who wrote before him. This observation is true in many cases. A man may write upon morals in a manner quite distinct from that of others who preceded him; but the subject of music is to be regarded upon very different principles; it is the air or melody which is the invention of the author, and which may in such cases be the subject, and you commit a piracy if, by taking, not a single bar but several, you incorporate in the new work that in which the whole meritorious part of the invention consists. I remember, in a case of copyright at Nisi Prius, a question arising as to how many bars were necessary for the constitution of a subject or phrase. *Sir George Smart*, who was a witness in the case, said that a mere bar did not constitute a subject or phrase, though three or four bars might do so. Now, it appears to me, that if you take from the composition of one author all those bars consecutively which form the entire air or melody without any material alteration, it is a piracy; though, on the other hand, you might take them in a different order, or broken by the intersection of others, like words, in such a manner as should not be a piracy. It must depend on whether the air taken is substantially the same with the original; now the most unlettered in music can distinguish one song from another; and the mere adaptation of the air, either by changing it to a dance or by transferring it from one instrument to another, does not, even to common apprehension, alter the original subject. The ear tells you that it is the same. The original air requires the aid of genius for its con-

Abridgments and digests.

What is a musical subject or phrase.

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struction, but a mere mechanic in music can make the adaptation or accompaniment. Substantially, the piracy is when the appropriated music, though adapted to a different purpose from that of the original, may still be recognised by the ear. The adding variations makes no difference in the principle. See further as to copyright in musical compositions, *post*, p. 737 *et seq.*

Dramatisation of novel is no infringement of literary copyright.

It has been seen that the dramatic representation of a play was held not to be an infringement of the literary copyright therein within the statute of Anne: see *Coleman* v. *Wathen*, 5 T. R. 245, *ante*, p. 674. And it may be regarded as settled that any person may take and dramatise the incidents of a novel the literary copyright in which is vested in another, and publicly represent the drama so composed without infringing the copyright of the author of the novel; see *Reade* v. *Conquest*, 9 C. B. (N. S.) 755. So in *Toole* v. *Young*, L. R. 9 Q. B. 523, where the author of a novel afterwards dramatised it himself, and another person in ignorance of this fact produced an independent dramatic version of the novel which was publicly represented, it was held that the author of the novel could not recover penalties for the representation as an infringement of his dramatic copyright under the stat. 3 & 4 Will. 4, c. 15, set out *post*, p. 738. *Cockburn*, C. J., in delivering his judgment, said (at p. 527), "The author of a novel is not protected against having his novel put into the form of a drama by different persons, and it seems to make no difference that he himself has dramatised it. When an author has once given his novel to the world, he cannot take away from other persons the right to dramatise it by himself transforming it into a drama, subject to this, that they must not borrow from his drama but only from his novel." And *Archbold*, J. (at p. 531), said that the novel upon its publication became open to all the world, for the purpose of dramatising it. Where however the plaintiff had written a drama and afterwards wrote and published a novel founded thereon, it was held that he was entitled to an injunction restraining another person who dramatised the novel in ignorance of the ex-

istence of the previous play as an infringement of the plaintiff's copyright, not in the novel, but in the original play: *Reade* v. *Lacy*, 1 J. & H. 527. Infringement of Copyright.

But though any person has a legal right to dramatise a novel for the purpose of its public representation, he has no right to publish the dramatic adaptation for purposes of sale; and he may be restrained from so doing as an infringement of the literary copyright of the author: *Tinsley* v. *Lacy*, 1 H. & M. 747. Sale of dramatic adaptation of novel.

Remedies for Infringement of Copyright.]—The jurisdiction to interfere to prevent literary piracy is assumed merely for the purpose of making effectual the legal right, which cannot be made effectual by any action for damages (17 Ves. 424; 3 My. & C. 728), and therefore before the Court will interfere, it must be satisfied that the plaintiff has either a complete legal title, or a title only defective by reason of some technical objection, which equity will remove, and not defective upon the merits. "This Court exercises its jurisdiction, not for the purpose of acting upon legal rights, but for the purpose of better enforcing legal rights, or preventing mischief, until they have been ascertained. In all cases of injunctions in aid of legal rights, whether it be copyright, patent right, or some other description of legal right which comes before the Court, the office of the Court is consequent upon the legal right; and it generally happens that the only question the Court has to consider is, whether the case is so clear and so free from objection, upon the grounds of equitable consideration, that the Court ought to interfere by injunction, or whether it ought to wait till the legal title has been established. That distinction depends upon a great variety of circumstances, and it is utterly impossible to lay down any general rule upon the subject by which the discretion of the Court ought in all cases to be regulated:" per Lord *Cottenham*, C., *Saunders* v. *Smith*, 3 My. & C. 728; see the cases upon patents, *ante*, p. 661 *et seq.* Jurisdiction to restrain infringements of copyright.

Before an injunction is granted therefore upon an *ex parte* application, not founded upon the defend-

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ant's admissions, the Court requires the plaintiff to swear to his authorship or title derived from the author: *Perceval* v. *Phipps*, 2 Ves. & B. 26; *Gee* v. *Pritchard*, 2 Swanst. 406; *Wyatt* v. *Barnard*, 3 Ves. & B. 78. Where, upon filing the bill, and upon an affidavit that the plaintiff had purchased or legally acquired the copy of "The Dunciad" (the book in question), an injunction was obtained *nisi causa*, it was held by Lord *King*, C., to be a good cause for dissolving the injunction, that the plaintiff had not set forth a good title, for he only said that he had purchased or legally acquired the copy, but did not say of the author, or who was the author: *Gilliver* v. *Snaggs*, Vin. Abr., *Books*, 4; 2 Eq. Ab. 522; see also *Platt* v. *Button*, 19 Ves. 447; *Nicol* v. *Stockdale*, 3 Swanst. 689; *Morris* v. *Kelly*, 1 Jac. & W. 481.

If a substantially good title is shewn, a Court of Equity does not strictly inquire whether it is perfect in point of legal form: *Mawman* v. *Tegg*, 2 Russ. 385. And the title of a purchaser of a single edition or impression of a work is sufficient to support a claim for an injunction: *Sweet* v. *Cater*, 5 Jur. 68.

The practice of granting such relief as the circumstances may require, upon an equitable title, and of requiring the defendant to admit the plaintiff's legal title, seems to be now settled: *Longman* v. *Oxberry*, Gods. Pat. 429; *Sweet* v. *Shaw*, 3 Jur. 217; *Sweet* v. *Maugham*, 4 Jur. 456, 479; *Dickens* v. *Lee*, 8 Jur. 183; *Bohn* v. *Bogue*, 10 Jur. 421; and see "Kerr on Injunctions," 439; *Sweet* v. *Cater*, 5 Jur. 68. But the author or other person having the legal title is generally a necessary party to the action: *Colburn* v. *Duncombe*, 9 Sim. 151.

Parties.

Distinct acts of piracy by different persons cannot be made the foundation of one action: *Dilly* v. *Doig*, 2 Ves. jun. 487. Every person having an interest in the work that is complained of must be before the Court: *Bramwell* v. *Halcomb*, 3 My. & C. 740. Where some of the parties interested in the original work have a share in the work complained of, they cannot be plaintiffs on the record: *Longman* v. *Winchester*, 16 Ves. 270.

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Equity will not interfere if the innocent nature of the plaintiff's work is questioned.

In *Walcot* v. *Walker*, 7 Ves. 1, Lord *Eldon*, suspecting from report as to general character of the author's writings, that the book in question was not such as to be entitled to protection, said: "I will see these publications, and determine on the nature of them, whether there is question enough to send to law as to the property in these copies. If upon inspection the work appears innocent, I will act on the submission in the answer; if criminal, I will not act at all; and, if doubtful, I will send that question to law." The order was to dissolve the injunction, unless within a week the plaintiff brought his book into Court. In *Lawrence* v. *Smith*, Jac. 471, Lord *Eldon*, C., having read the work, and entertaining a doubt whether it was not illegal, by impugning the doctrine of the immortality of the soul and other dogmas, dissolved an injunction which had been obtained to protect it, retaining the bill, with liberty to apply after action. In an *Anonymous case*, cit. Jac. 474, n., an injunction to restrain a piracy of Lord Byron's "Don Juan" was refused on similar grounds; but the defendant was ordered by Sir *J. Leach*, V.-C., to keep an account.

When the interest of the work is of a temporary character, the Court is reluctant to interfere by injunction, on account of the irreparable mischief which such a course occasions, in case the defendant is not guilty of piracy: *Matthewson* v. *Stockdale*, 12 Ves. 277; *Gurney* v. *Longman*, 13 Ves. 505; *Sheriff* v. *Coates*, 1 Russ. & M. 169. In *Sweet* v. *Maugham*, 4 Jur. 481, the piracy being clear, an injunction was granted, notwithstanding the ephemeral nature of the defendant's work: see *Campbell v. Scott*, 6 Jur. 486; *vide ante*, p. 724.

In *Southey* v. *Sherwood*, 2 Mer. 435, Lord *Eldon* refused, before action, to restrain the publication of a work which the author had left for twenty-three years in the hands of a bookseller, to whom it was originally sent with the intention of publishing it, which intention was afterwards relinquished. The mode in which the defendant had got possession of the MS. was not explained. There was a doubt as to the morality of the publication: *ante*, p. 695, note (*e*).

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In *Platt* v. *Button*, 19 Ves. 447; G. Coop. 303, where various piracies had been committed at various times during fifteen years, on pieces of music published by the plaintiff at different times, without his complaining, Lord *Eldon* said that the bill should have been confined to those recently pirated—as within a few months. The giving permission to some persons to publish, rendered it necessary to bring an action before the applying for an injunction against others copying the same things: see *Rundell* v. *Murray*, Jac. 316, *ante*, p. 639, where relief was refused on the ground of the plaintiff's acquiescence: *Thompson* v. *Stanhope*, Ambl. 739; *Walcot* v. *Walker*, 7 Ves. 2; *Robinson* v. *Wilkins*, 8 Ves. 224 (where an injunction was refused after two years' delay); and *Bailey* v. *Taylor*, 1 Russ. & M. 73. The plaintiff is expected to apply with promptness upon discovering the piracy; but he will be allowed sufficient time to examine and compare the two works thoroughly, in order to ascertain the strength of the case he may be able to make; and the time allowed will vary with the nature of the works: see *Mawman* v. *Tegg*, 2 Russ. 393. In *Lewis* v. *Chapman*, 1 Beav. 133, Lord *Langdale*, M. R., refused an injunction on the ground of delay. The plaintiffs had ample notice, and had allowed more than six years to elapse before they applied: see *Lewis* v. *Fullarton*, 2 Beav. 7; *Saunders* v. *Smith*, 3 My. & C. 711; *Buxton* v. *James*, 5 De G. & Sm. 80; *Hogg* v. *Scott*, L. R. 18 Eq. 444; *Wilson* v. *Dicks*, 10 Ch. D. 247.

Objection that the plaintiff has been guilty of piracy.

Another ground on which it seems that equity will refuse to assist a plaintiff is his own demerit, in having been guilty of piracy from other writers in the work on which he founds his title: *Cary* v. *Faden*, 5 Ves. 25. But this doctrine is rather questionable: see *Tonson* v. *Walker*, 3 Swanst. 672. Of course, the plaintiff cannot succeed if the originality of the parts which he charges the defendant with copying is disproved: see *ante*, p. 692.

The question in the Court has been, in most cases, whether a piracy has been committed, and whether the circumstances are such as to entitle the plaintiff to damages; as, for instance, whether the plaintiff's

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Piracy, how ascertained.

own work is original; see *Sheriff* v. *Coates*, 1 Russ. & M. 159; *Cary* v. *Faden*, 5 Ves. 25; *Nicol* v. *Stockdale*, 3 Swanst. 689; —— v. *Leadbetter*, 4 Ves. 681; *Vesey* v. *Sweet*, 5 Ves. 709, n. In *Carnan* v. *Bowles*, 2 B. C. C. 80; 1 Cox, 283, the question of piracy of a road-book was referred to the Master: see also *Bell* v. *Walker*, 1 Br. C. C. 450. In *Whittingham* v. *Wooller*, 2 Swanst. 430, the Master of the Rolls took the works home to compare them himself; and this has frequently been done, the judge comparing the books either in Court, with the assistance of the counsel, or at home: see *Cary* v. *Faden*, 5 Ves. 26; *Butterworth* v. *Robinson*, Id. 709; *Sheriff* v. *Coates*, 1 Russ. & M. 159; *Fradella* v. *Weller*, 2 Russ. & M. 249; *Lewis* v. *Fullarton*, 2 Beav. 8; *Bramwell* v. *Halcomb*, 3 My. & C. 739; *Kelly* v. *Hooper*, 4 Jur. 22; *Sweet* v. *Maugham*, Id. 479; *Sweet* v. *Cater*, Id. 70.

The plaintiff is not required to point out the particular passages which have been pirated; a general allegation of piracy is sufficient: *Mawman* v. *Tegg*, 2 Russ. 385; *Sweet* v. *Maugham*, 4 Jur. 479. The original work, and the publication complained of, are generally required to be produced; but this may sometimes be dispensed with: *Fradella* v. *Weller*, 2 Russ. & M. 249.

Form of injunction where the pirated matter forms a small part of the defendant's publication.

Mawman v. *Tegg.*

Some difficulty has been made as to the form of the injunction in cases where the pirated matter constitutes but a small portion of the defendant's publication. In *Mawman* v. *Tegg*, 2 Russ. 390 (the case of the Encyclopædias Metropolitana and Londinensis), Lord *Eldon*, C., said, "As to the hard consequences which would follow from granting an injunction where a very large portion of the work is unquestionably original, I can only say, that if the parts which have been copied cannot be separated from those which are original without destroying the use and value of the original matter, he who has made an improper use of that which did not belong to him must suffer the consequences of so doing. If a man mixes what belongs to him with what belongs to me, and the mixture is forbidden by the law, he must again separate them, and he must bear all the

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mischief and loss which the separation may occasion If an individual chooses in any work to mix my literary matter with his own, he must be restrained from publishing the literary matter which belongs to me; and if the parts of the work cannot be separated, and if by that means the injunction which restricted the publication of my literary matter prevents also the publication of his literary matter, he has only himself to blame." In *Lewes* v. *Fullarton*, 2 Beav. 10, the same sort of difficulty arose, and Lord *Langdale*, after the comparison of the works had been carried on to some extent, granted an injunction restraining the defendant from selling any copies of his work containing any passages copied from the plaintiff's: see also *Campbell* v. *Scott*, 6 Jur. 186. If however the pirated parts can be separated from the rest of the work this will be done. Indeed, the order is in almost every case framed in such a manner as to allow the defendant to publish what he is entitled to, if he can separate it from what he is not entitled to: see *Carnan* v. *Bowles*, 2 B. C. C. 80: 1 Cox, 283; *Hogg* v. *Kirby*, 8 Ves. 226; *Longman* v. *Winchester*, 16 Ves. 272.

Account.

Where no injunction is granted, an account will sometimes be ordered to be kept by the defendant until the hearing: *Wilkins* v. *Aikin*, 17 Ves. 425; *Barfield* v. *Nicholson*, 2 S. & St. 8; *Sheriff* v. *Coates*, 1 Russ. & M. 159. But from the defendant's work being published at a reduced price, or from other reasons, an account would often fail to secure the plaintiff from the injury occasioned by the sale, and when the Court sees that this is likely to happen, it is reluctant to allow the defendant to proceed: *Matthewson* v. *Stockdale*, 12 Ves. 227; *Mawman* v. *Tegg*, 2 Russ. 400; *Lewis* v. *Fullarton*, 2 Beav. 12; *Kelly* v. *Hooper*, 3 Jur. 22: see *Sweet* v. *Maugham*, 4 Jur. 481; *Campbell* v. *Scott*, 6 Jur. 486. In an *Anonymous case*, cit Jac. 474, however, an injunction to restrain the piracy of "Don Juan" being refused on the ground of a doubt as to the moral propriety of the original work, Sir *J. Leach*, V.-C., directed an account to be kept, although no doubt the defendant's publication was sold at a much lower price than

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the plaintiff's. The defendant in *Mawman* v. *Tegg* was directed to deliver his accounts monthly, sealed up and verified by affidavit: 2 Russ. 404. In *Bramwell* v. *Halcomb*, 3 My. & C. 739, a course which was suggested and approved of by Lord *Cottenham*, was to refer the amount of damages sustained by the plaintiff to the Master.

Damages.

Right to account depends on right to injunction.

It has often been said that where there is no right to an injunction there can be no account; by this it is meant, not that an account is never ordered unless an injunction is also directed—the cases just cited prove the contrary—but that the right to account is ancillary to and dependent on the right to an injunction; so when it is doubtful whether the plaintiff will be entitled to an injunction, then an account is frequently directed until the right to the injunction is settled; but as soon as it is clear that the plaintiff cannot have an injunction, then the right to the account fails also: *Bailey* v. *Taylor*, 1 Russ. & M. 73; *Smith* v. *London and South Western Rail. Co.*, Kay, 408. If, however, the case is brought to a hearing and a perpetual injunction is granted, an account will always be decreed as incident thereto: see *Hogg* v. *Kirby*, 8 Ves. 215; *Grierson* v. *Eyre*, 9 Ves. 689. The account decreed will be of net, not gross, profits: *Delfe* v. *Delamotte*, 3 K. & J. 581.

5. Dramatic and Musical Copyright.

Former law as to right of representation.

Before the stat. 3 & 4 Will. 4, c. 15, it was held that the proprietor of the copyright of a published dramatic piece could not prevent any person from representing it on the stage in an altered and abridged form: *Murray* v. *Elliston*, 5 B. & Al. 657; 1 D. & Ry. 299.

In a case which occurred two years previously, Lord *Eldon*, C., had granted an injunction to restrain the performance, by the defendant, of a comedy which had been assigned by writing to the plaintiffs: *Morris* v. *Kelly*, 1 Jac. & W. 481. And in *Colman* v. *Wathen*, 5 T. R. 245 (*ante*, p. 674), it was held, that the acting of a play was not a publication within the statute of Anne: see also *Macklin* v. *Richardson*, Amb. 694.

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The stat. 3 & 4 Will. 4, c. 15, after reciting the General Copyright Act, 54 Geo. 3, c. 156, enacts,—

"That from and after the passing of this Act, the author of any tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment, composed and not printed and published by the author thereof or his assignee, or which shall hereafter be composed and not printed or published by the author thereof or his assignee, or the assignee of such author, shall have as his own property the sole liberty of representing, or causing to be represented, at any place or places of dramatic entertainment whatsoever in any part of the United Kingdom of Great Britain and Ireland, in the isles of Man, Jersey, and Guernsey, or any part of the British dominions, any such production as aforesaid, not printed and published by the author thereof or his assignee, and shall be deemed and taken to be the proprietor thereof; and that the author of any such production printed and published within ten years before the passing of this Act by the author thereof or his assignee, or which shall hereafter be so printed and published, or the assignee of such author, shall, from the time of passing this Act, or from the time of such publication respectively, until the end of twenty-eight years from the day of such first publication of the same, and also, if the author or authors or the survivor of the authors shall be living at the end of that period, during the residue of his natural life, have, as his own property, the sole liberty of representing or causing to be represented the same at any such place of dramatic entertainment as aforesaid, and shall be deemed and taken to be the proprietor thereof" (*t*).

By sect. 2, any person representing or causing to be represented, without the consent in writing of the author or other proprietor first had and obtained, at any place of dramatic entertainment within the limits aforesaid, any such production as aforesaid, or any part thereof, is to be liable for every such representation to the payment of an amount not less than forty shillings, or to the full amount of the benefit or advantage arising from such representation, or the injury or loss sustained by the plaintiff therefrom, whichever shall be the greater damages, to be recovered by such author or other proprietor in any

(*t*) The remainder of sect. 1 relates to consents given before the passing of the Act.

Court having jurisdiction in such cases in that part of the said United Kingdom in which the offence shall be committed. And by sect. 3, all actions or proceedings are to be brought within twelve calendar months next after such offence committed. **Dramatic and Musical Copyright.**

The assignee spoken of in the above Act is the assignee of the copyright of the dramatic piece, not the assignee of the privilege created by the Act, unless, of course, by express contract the privilege be separated from the copyright. Thus it was held, that where the copyright of a dramatic piece had been assigned within the ten years next before the passing of the Act, the assignee of that copyright was entitled to the sole liberty of representing it: *Cumberland* v. *Planché*, 1 A. & E. 580. Assignee of copyright entitled to benefit of representation.

It is for the jury to determine whether there has been a representation of a dramatic piece within the Act, and the jury having found that the singing of two or three songs in Weber's opera of Oberon, in the words contained in the plaintiff's version of that opera, was a representation of part of it within the statute, and having given the lowest damages (forty shillings), the Court refused to disturb the verdict: *Planché* v. *Braham*, 8 Car. & P. 68; see *De Pinna* v. *Polhill*, 8 Car. & P. 78; *Chatterton* v. *Cave*, 3 App. Ca. 483. What is a representation.

The introduction to a pantomime is a dramatic piece or entertainment within the meaning of the Act, and is thereby protected from piracy: *Lee* v. *Simpson*, 3 C. B. 871.

By sect. 20 of the stat. 5 & 6 Vict. c. 45 (see *ante*, p. 684), the provisions of the Act of Will. 4 are extended to musical compositions, and the term of copyright as provided by the later Act (see sect. 3 thereof, *ante*, p. 678), is applied to the liberty of representing dramatic pieces and musical compositions. Stat. 5 & 6 Vict. c. 45.

The property in a dramatic piece, or a musical composition, is of a two-fold nature, and includes the literary copyright or exclusive right to publish the sheets of letter-press or music as a "book" within the stat. 5 & 6 Vict. c. 45; and also the exclusive right to the public representation or per- Nature of property in dramatic and musical compositions.

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formance of the piece or composition as a dramatic or musical entertainment under the stat. 3 & 4 Will. 4, c. 15. These rights are altogether separate and distinct, and the assignment of the copyright will not confer on the assignee the right of representation, unless an express entry of such intention is made in the register: see stat. 5 & 6 Vict. c. 45, sect. 22, *ante*, p. 685.

Where, however, a composer assigned the copyright in two musical compositions, together with all his "property" and "benefit" therein, it was held that the sole liberty of performing the compositions passed to the assignee: *Ex parte Hutchins and Romer*, 4 Q. B. D. 483.

Copyright in dramatic and musical works written for another person.

A person who employed another to write a play for him on a given subject or otherwise, does not thereby acquire the dramatic copyright in the play under the stat. 3 & 4 Will. 4, c. 15. But it has been held that a person who is employed by another to compose music to be used as incidental or accessory to a dramatic piece, has no copyright in his music, the property in which vests in the employer: *Hatton* v. *Kean*, 7 C. B. N. S. 268; *Wallerstein* v. *Herbert*, 15 W. R. 838; 16 L. T. N. S. 453. As to the representation of an arrangement for the pianoforte of the music of an opera, see *Wood* v. *Boosey*, L. R. 2 Q. B. 340; *S. C.* on appeal, L. R. 3 Q. B. 223; *Boosey* v. *Fairlie*, 7 Ch. D. 301.

What constitutes infringement of dramatic copyright.

In order to constitute an infringement of the dramatic copyright in a play by the representation of the production *or any part thereof*, it must be shown that the part alleged to have been taken from the original play and represented in the second play is substantial and material: *Chatterton* v. *Cave*, 3 App. Ca. 483. The representation of a dramatic piece will not be an infringement of the copyright within sect. 1 of the stat. 3 & 4 Will. 4, c. 15, unless the piece is represented at a place of dramatic entertainment (as to which see *Dack* v. *Bates*, 13 Q. B. D. 843); but sects. 20, 21, of the stat. 5 & 6 Vict. c. 45 (*ante*, pp. 684, 685), contain no such limitation of the composer's exclusive right of representation, and such right will be infringed by an unauthorised perform-

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ance in public, though not in a place of dramatic entertainment: *Wall* v. *Taylor*, 11 Q. B. D. 102.

Exclusive right of representation, how lost.

The representation, in the first instance, abroad of a dramatic piece will disentitle the author from the exclusive right of representation in this country, such representation being a publication within the International Copyright Act, 1844 (7 & 8 Vict. c. 12), sect. 19: *Boucicault* v. *Delafield*, 12 W. R. 101; *Boucicault* v. *Chatterton*, 5 Ch. D. 267.

But the publication in this country of a dramatic piece or musical composition as a book before it has been publicly represented or performed, will not deprive the author or composer, or his assignee, of the exclusive right to its public representation or performance: *Chappell* v. *Boosey*, 21 Ch. D. 232.

Joint authorship.

Sect. 4 of the stat. 3 & 4 Will. 4, c. 15, provides that the expressions author, publisher, &c., when used in the singular number, shall extend to any number of persons. In order to support a claim to joint authorship of a dramatic piece, it must be shown that the work was the result of a joint design: it is not sufficient for the claimant to show that he introduced alterations and improvements into the piece either with or without the author's consent: *Levy* v. *Ruttley*, L. R. 6 C. P. 523.

Licence by one of several co-owners of play.

One of several co-owners of a dramatic entertainment cannot, without the consent of the others, grant a licence for its representation: *Powell* v. *Head*, 12 Ch. D. 686.

Stat. 45 & 46 Vict. c. 40.

The Copyright (Musical Compositions) Act, 1882 (45 & 46 Vict. c. 40), after reciting that it is expedient "to protect the public from vexatious proceedings for the recovery of penalties for the unauthorised performance of" musical compositions, enacts as follows:—

Sect. 1. "On and after the passing of this Act the proprietor of any copyright in any musical composition, first published after the passing of this Act, or his assignee, who shall be entitled to and desirous of retaining in his own hands exclusively the right of public representation or performance of the same, shall print or cause to be printed upon the title-page of every published copy of such musical composition a notice to the effect that the right of public representation or performance is reserved."

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Sect. 2. "In case, after the passing of this Act, the right of public representation or performance of, and the copyright in, any musical composition shall be or become vested before publication of any copy thereof in different owners, then, if the owner of the right of public representation or performance shall desire to retain the same, he shall, before any such publication of any copy of such musical composition, give to the owner of the copyright therein notice in writing requiring him to print upon every copy of such musical composition a notice to the effect that the right of public representation or performance is reserved; but in case the right of public representation or performance of, and the copyright in, any musical composition shall, after publication of any copy thereof, subsequently to the passing of this Act, first become vested in different owners, and such notice as aforesaid shall have been duly printed on all copies published after the passing of this Act previously to such vesting, then, if the owner of the right to performance and representation shall desire to retain the same, he shall, before the publication of any further copies of such musical composition, give notice in writing to the person in whom the copyright shall be then vested, requiring him to print such notice as aforesaid on every copy of such musical composition to be thereafter published."

By sect. 3 a penalty of 20*l.* is imposed on an owner of the copyright in a musical composition who fails to comply with a request to print on the copies a notice that the right of public representation is reserved; and sect. 4 provides that notwithstanding the provisions of the stat. 3 & 4 Will. 4, c. 15, the costs of proceedings, where the plaintiff does not recover more than 40*s.*, are to be in the discretion of the Court.

6. Paintings, Drawings, and Photographs.

Stat. 25 & 26 Vict. c. 68.

Before the passing of the stat. 25 & 26 Vict. c. 68, there was no copyright in paintings, drawings, or photographs. But by that Act it was enacted as follows:—

Copyright in paintings, &c., hereafter made or sold to vest in the author for his

Sect. 1. "The author, being a British subject or resident within the dominions of the Crown, of every original painting, drawing, and photograph which shall be, or shall have been, either in the British dominions or elsewhere, and which shall not have

Paintings, Drawings, and Photographs.

been sold or disposed of before the commencement of this Act, and his assigns, shall have the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing, and the design thereof, or such photograph and the negative thereof, by any means and of any size, for the term of the natural life of such author, and seven years after his death; provided, that when any painting or drawing, or the negative of any photograph, shall for the first time after the passing of this Act be sold or disposed of, or shall be made for or executed on behalf of any other person for a good or a valuable consideration, the person so selling or disposing of or making or executing the same, shall not retain the copyright thereof, unless it be expressly reserved to him by agreement in writing, signed, at or before the time of such sale or disposition, by the vendee or assignee of such drawing or painting, or of such negative of a photograph, or by the person for or on whose behalf the same shall be so made or executed, but the copyright shall belong to the vendee or assignee of such painting or drawing, or of such negative of a photograph, or to the person for or on whose behalf the same shall have been made or executed; nor shall the vendee or assignee thereof be entitled to any such copyright unless, at or before the time of such sale or disposition, an agreement in writing, signed by the person so selling or disposing of the same, or by his agent duly authorized, shall have been made to that effect."

life and for seven years after his death.

Sect. 2. "Nothing herein contained shall prejudice the right of any person to copy or use any work in which there shall be no copyright, or to represent any scene or object, notwithstanding there may be copyright in some representation of such scene or object."

Sect. 3. "All copyright under this Act shall be deemed personal or moveable estate, and shall be assignable at law; and every assignment thereof, and every licence to use or copy by any means or process the design or work which shall be the subject of such copyright, shall be made by some note or memorandum in writing, to be signed by the proprietor of the copyright, or by his agent appointed for that purpose in writing."

Copyright to be personal estate.

Assignments, licences, &c., to be in writing.

Sect. 4. "There shall be kept at the Hall of the Stationers Company, by the officer appointed by the said Company, for the purposes of the Act passed in the sixth year of her present Majesty, intituled 'An Act to amend the law of copyright,' a book or books entitled 'The register of Proprietors of Copyright in Paintings, Drawings, and Photographs,' wherein shall be entered a memorandum of every copyright to which any person shall be entitled under this Act, and also of every subsequent assignment of any

Register of proprietors of copyright in paintings, drawings, and photographs to be kept at Stationers' Hall by the officer appointed for the purposes

Paintings, Drawings, and Photographs.

of 5 & 6 Vict. c. 45.

such copyright; and such memorandum shall contain a statement of the date of such agreement or assignment, and of the names of the parties thereto, and of the name and place of abode of the person in whom such copyright shall be vested by virtue thereof, and of the name and place of the author of the work in which there shall be such copyright, together with a short description of the nature and subject of such work, and in addition thereto, if the person registering shall so desire, a sketch, outline, or photograph of the said work; and no proprietor of any such copyright shall be entitled to the benefit of this Act until such registration; and no action shall be sustainable nor any penalty be recoverable in respect of anything done before registration."

Who is the author of a photograph.

The author of a photograph was defined by *Brett*, M.R., in *Nottage* v. *Jackson*, 11 Q. B. D. 627, as "the person who superintended the arrangement who has actually formed the picture by putting the people into position, and arranging the place in which the people are to stand;" and this definition was concurred in by *Bowen*, L.J.: see at pp. 633, 637. In that case it was held that several persons might be registered under the Act as the "author," but it was not necessary to decide what in that case could be the duration of the copyright.

Photograph from engraving.

A photograph of an engraving from a picture is an original production to which the Act gives a copyright: *Graves' Case*, L. R. 4 Q. B. 715.

Description.

As to what is a sufficient "description of the nature and subject" of a work of art, see *Ex parte Beal*, L. R. 3 Q. B. 387; *Graves' Case*, L. R. 4 Q. B. 715.

Registration.

An assignee cannot sue for penalties until the assignment to him has been duly registered: *Dupay* v. *Wilkes*, W. N. 1879, p. 145. But if such assignment has been registered, the assignee has a good title under the Act, although the original copyright has not been registered: *Graves' Case*, L. R. 4 Q. B. 715. Registration is only *primâ facie* evidence of title, and is liable to be rebutted: *Lucas* v. *Cooke*, 13 Ch. D. 872. In that case a qualified assignment had been made of a picture for the purpose of producing an engraving thereof of a specified description by the proprietor to the plaintiff, who had registered himself under the stat. 25 & 26 Vict.

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c. 68, as the proprietor of the copyright of the picture: it was held that he was not entitled to restrain the publication of a chromo-lithograph of the same subject, without proving that it was taken not from the original picture but from the engraving, of which alone he was entitled to copyright under the Act. As to who is a person "aggrieved" by registration within the meaning of the statute, see *Graves' Case*, L. R. 4 Q. B. 715.

No copyright in immoral pictures, &c.

There can be no copyright in pictures, drawings, or photographs of a libellous, immoral, or irreligious nature: see *Fores* v. *Johnes*, 4 Esp. 97; *Du Bost* v. *Beresford*, 2 Camp. 511; and see stats. 14 & 15 Vict. c. 100, sect. 29; 20 & 21 Vict. c. 83, as to the public sale or exhibition of obscene pictures, &c.

7. Prints and Engravings.

Stat. 8 Geo. 2, c. 13.

The stat. 8 Geo. 2, c. 13, recites that—

"Divers persons have by their own genius, industry, pains, and expense, invented and engraved, or worked in mezzotinto or chiaro-oscuro, sets of historical and other prints, in hopes to have reaped the sole benefit of their labours. And that printsellers and other persons have of late, without the consent of the inventors, designers, and proprietors of such prints, frequently taken the liberty of copying, engraving, and publishing, or causing to be copied, engraved, or published, base copies (*u*) of such works, designs, and prints, to the very great prejudice and detriment of the inventors, designers, and proprietors thereof."

The statute then enacts as follows:—

Property of prints vested in the inventor for fourteen years.

"That from and after the 24th June, 1735, every person who shall invent and design, engrave, etch, or work in mezzotinto or chiaro-oscuro, or from his own work and invention shall cause to be designed and engraved, &c., any historical or other print or prints, shall have the sole right and liberty of printing and reprinting the same for the term of fourteen years, to commence from the day of the first publishing thereof, which shall be duly engraved

Proprietor's name to be affixed to each print.

(*u*) "Anything is a base copy within the language of this statute which is not the genuine work of the author:" per *Kelly*, C.B., in *Groves* v. *Ashford*, L. R. 2 C. P. at p. 419.

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with the name of the proprietor on each plate and printed on every such print or prints."

The section then provides that if any print-seller or other person shall engrave, &c., and sell or cause to be engraved and sold in whole or in part, or with or without variation, any such print or prints or any part thereof without the consent in writing of the proprietor or proprietors first obtained, signed by him or them in the presence of two credible witnesses, such offenders shall forfeit the plates and sheets, and further forfeit five shillings for every print which shall be found in his, her, or their custody, either printed or published, and exposed to sale, or otherwise disposed of contrary to the Act.

Sect. 2 provides that purchasers of plates for printing from the original proprietors may print and reprint from the plates without incurring any of the penalties in this Act mentioned.

By sects. 3 and 4 any action brought against any person for doing anything in pursuance of the Act, is to be brought within three months after so doing, and any action for any offence committed against this Act is to be brought within the space of three months after the discovering of such offence.

Jeffreys v. *Baldwin.*

Construction of 8 Geo. 2, c. 13.

In *Jeffreys* v. *Baldwin*, Ambl. 164, a bill was filed under the 8 Geo. 2, c. 13, for a discovery and injunction as to the piracy of a print procured to be done by the plaintiff, Lord *Hardwicke*, C., who said the plaintiff was not entitled to relief, for his print was not within the statute, which was made for the encouragement of genius and art; if it was, any person who employed a printer or engraver would be so too. But, in the previous case of *Blackwell* v. *Harper*, 2 Atk. 93, his Lordship had held that the Act was not confined to inventions, but extended to copies of natural objects, buildings, &c.

Stat. 7 Geo. 3, c. 38.

The defects of this statute were remedied by the stat. 7 Geo. 3, c. 38, which, after reciting the 8 Geo. 2, c. 13, and that it proved ineffectual for the purposes intended, enacts—

Original inventors, &c.,

"That from and after the 1st day of January, 1767, all and every person and persons who shall invent or design, engrave, etch,

or work in mezzotinto or chiaro-oscuro, or from his own work, design, or invention, shall cause or procure to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, shall have and are hereby declared to have the benefit and protection of the said Act and this Act, under the restrictions and limitations hereinafter mentioned."

of prints, &c., entitled to the benefit of recited and present Act, &c.

Sect. 2. "That from and after the said 1st day of January, 1767, all and every person or persons who shall engrave, etch, or work in mezzotinto or chiaro-oscuro, or cause to be engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture, either ancient or modern, shall have and are hereby declared to have the benefit and protection of the said Act and this Act for the term hereinafter mentioned, in like manner as if such print had been engraved or drawn from the original design of such graver, etcher, or draftsman; and if any person shall engrave, print, and publish, or import for sale any copy of any such print contrary to the true intent and meaning of this and the said former Act, every such person shall be liable to the penalties contained in the said Act, to be recovered as therein and hereinafter is mentioned."

Protection of prints taken from the works of others.

Sect. 6. "That the party prosecuting shall commence his prosecution within the space of six calendar months after the offence committed."

Sect. 7. "That the sole right and liberty of printing and reprinting intended to be secured and protected by the said former Act and this Act, shall be extended, continued, and be vested in the respective proprietors for the space of twenty-eight years, to commence from the day of the first publishing of any of the works respectively hereinbefore and in the said former Act mentioned."

By sect. 8 any action brought against any person or persons whatsoever, for doing or causing to be done anything in pursuance of this Act, is to be brought within the space of six calendar months after the fact committed.

The protection given by this Act is strictly commensurate with the engraver's own work, and does not give him any rights in the work of the original painter as regards the design, grouping, or composition of the picture. So, a pattern for wool-work of a design taken from Millais' picture of "The Huguenot," though made with the aid of an en-

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graving from the picture, was held to be no infringement of the copyright in the engraving: *Dicks* v. *Brooks,* 13 Ch. D. 22.

The stat. 17 Geo. 3, c. 57, reciting the former Acts, and that they were not sufficient for the purposes intended, enacts—

If any engraver, &c., shall engrave, &c., any print without the consent of the proprietor, he shall be liable to damages and double costs.

"That from and after the twenty-fourth day of June, 1777, if any engraver, etcher, printseller, or other person shall, within the time limited by the aforesaid Acts, or either of them, engrave, etch, or work, or cause or procure to be engraved, etched, or worked in mezzotinto or chiaro-oscuro, or otherwise in any manner copy in the whole or in part by varying, adding to, or diminishing from the main design, or shall print, reprint, or import for sale, or cause or procure to be printed, reprinted, or imported for sale, or shall publish, sell, or otherwise dispose of, or cause or procure to be published, sold, or otherwise disposed of, any copy or copies of any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, which hath or have been, or shall be engraved, etched, drawn, or designed, in any part of Great Britain, without the express consent of the proprietor or proprietors thereof first had and obtained in writing signed by him, her, or them, respectively, with his, her, or their own hand or hands, in the presence of and attested by two or more credible witnesses, then every such proprietor or proprietors shall and may, by and in a special action upon the case so brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with double costs of suit."

6 & 7 Will. 4, c. 59.

Stat. 17 Geo. 3, c. 57, extended to Ireland.

By the stat. 6 & 7 Will. 4, c. 59, all the provisions contained in the stat. 17 Geo. 3, c. 57, and of all the other Acts therein recited, are extended to Ireland; and by sect. 2 of this Act, if any engraving or print of any description whatsoever, either in whole or in part, shall be published in any part of Great Britain or Ireland, without the express consent of the proprietor or proprietors thereof first had and obtained *in writing,* signed by him, her, or them respectively, in the presence of and attested by *two* or more credible *witnesses,* action upon the case may be brought against the person so offending in any court of

law in Great Britain or Ireland, to recover damages.

By sect. 14 of the stat. 15 & 16 Vict. c. 12, after reciting that doubts had been entertained whether the provisions of the earlier Acts extended to lithographs and certain other impressions, declares that the provisions of those Acts "are intended to include prints taken by lithography or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely; and the said Acts shall be construed accordingly."

Who is the inventor.

A person may be the inventor or designer of a drawing within the meaning of the Acts relating to artistic designs, although he only furnishes the ideas and employs another person to execute the drawing: *Stannard* v. *Harrison*, 19 W. R. 811; *S. C.*, 24 L. T. (N. S.) 570.

Name and date must be on the print.

The earlier cases on the question, whether under the Acts as to engravings it was essential to the proprietor's protection that his plate should express the name of the proprietor and the date of publication were not accordant: see *Blackwell* v. *Harper*, 2 Atk. 93; *Harrison* v. *Hogg*, 2 Ves. jun. 323; *Thompson* v. *Symonds*, 5 T. R. 41; *Roworth* v. *Wilks*, 1 Camp. 94. But it is now settled that the name of the proprietor and the date of publication must be engraved on the print, to entitle the proprietor to his action; but the word "proprietor" after the name is not essential: *Newton* v. *Cowie*, 12 Moo. 457; *Brooks* v. *Cock*, 3 A. & E. 138; *Graves* v. *Ashford*, L. R. 2 C. P. 410.

Name of firm.

The name of a firm is a sufficient description of the proprietors of an engraving, without stating the names of the partners: *Rock* v. *Lazarus*, L. R. 15 Eq. 104.

Name of assignee.

Where the assignee of a print erased the name of the original proprietor and engraved his own in the place, leaving the original date, it was held, that he was entitled to sue for an infringement: *Thompson* v. *Symonds*, 5 T. R. 41. And, in the same case, it was held that the original plate was not required in

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evidence, one of the impressions from it being sufficient.

Colourable variation.

Guilty knowledge.

It is not necessary, to sustain an action, that the pirated print should be precisely a fac-simile of the original, or that the seller who is sued should be proved to have known it to be pirated, the words as to knowledge being omitted in the stat. 17 Geo. 3, c. 57 : *West* v. *Francis*, 5 B. & Al. 737. The question, whether the copy complained of is substantially a copy, is for the jury : *Moore* v. *Clarke*, 6 Jur. 648.

Copying from original picture.

Diorama from print.

The making of a new engraving from the original picture is no piracy on the former engraving : *De Berenger* v. *Wheble*, 2 Stark, 548. Nor it seems—and is clear on principle—is the making of a picture from an engraving and exhibiting it as a diorama an infringement : *Martin* v. *Wright*, 5 Sim. 297. Nor does the Act extend to a fraudulent taking of impressions from the original plate by a person into whose possession it is intrusted : *Murray* v. *Heath*, 1 B. & Ad. 804.

Taking impressions from original plate.

Foreign prints.

Engravings made and printed abroad and first published in this country are not, it seems, within the protection of the Act : *Page* v. *Townsend*, 5 Sim. 295.

Immoral prints.

Prints of an immoral tendency are not protected : *Du Bost* v. *Beresford*, 2 Camp. 511 ; *Fores* v. *Johnes*, 4 Esp. 97.

8. Sculptures, Casts, &c.

54 Geo. 3, c. 56.

The stat. 54 Geo. 3, c. 56 (*y*), enacts—

Sole right and property of and in new and original sculpture, models, and copies, vested in proprietor for fourteen years.

"That from and after the passing of this Act, every person or persons who shall make, or cause to be made, any new and original sculpture, or model, or copy, or cast of the human figure, or human figures, or of any bust or busts, or of any part or parts of the human figure, clothed in drapery, or otherwise, or of any animal or animals, or of any part or parts of any animal combined with the human figure, or otherwise ; or of any subject being matter of invention in sculpture, or of any alto or basso-relievo representing any of the

(*y*) This statute amended the provisions of the Stat. 38 Geo. 3, c. 71, which had been found ineffectual, and which has been repealed by the Stat. Law Rev. Act, 1861.

matters or things hereinbefore mentioned, or any cast from nature of the human figure, or of any part or parts of the human figure, or of any cast from nature of any animal, or of any part or parts of any animal, or of any such subject containing or representing any of the matters and things hereinbefore mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture, &c., for the term of fourteen years from the first putting forth or publishing the same; provided in all and in every case the proprietor or proprietors do cause his, her, or their name or names, with the date, to be put on all and every such new and original sculpture, model, copy, or cast, and on every such cast from nature, before the same shall be put forth or published." Sculptures, Casts, &c.

Sect. 2. "That the sole right and property of all works which have been put forth or published under the protection of the said recited Act, shall be extended, continued to, and vested in the respective proprietors thereof for the term of fourteen years, to commence from the date when such last-mentioned works respectively were put forth and published."

Sect. 3. "That if any person or persons shall, within such term of fourteen years, make or import, or cause to be made or imported, or exposed to sale, or otherwise disposed of, any pirated copy or pirated cast of any such new and original sculpture, &c., whether such pirated copy or pirated cast be produced by moulding, or copying from, or imitating in any way any of the matters or things put forth or published under the protection of this Act, or of any works which have been put forth or published under the protection of the said recited Act, the right and property whereof is and are secured, extended, and protected by this Act in any of the cases aforesaid, to the detriment, damage, or loss of the original or respective proprietor or proprietors of any such works so pirated, then and in all such cases the said proprietor or proprietors, or assignee or assignees, shall and may, by and in a special action upon the case to be brought against the person or persons so offending, receive such damages as a jury on a trial of such action shall give or assess."

Sect. 4. "That no person or persons who shall or may hereafter purchase the right or property of any new and original sculpture or model, or copy, or cast, or of any cast from nature, or of any of the matters and things published under or protected by virtue of this Act, of the proprietor or proprietors, expressed in a deed in writing signed by him, her, or them respectively, with his, her, or their own hand or hands, in the presence of and attested by two or more credible witnesses, shall be subject to any action Repealed copyright by deed protected.

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for copying or casting or vending the same, anything contained in this Act to the contrary notwithstanding."

Sect. 5. "That all actions to be brought as aforesaid against any person or persons for any offence committed against this Act, shall be commenced within six calendar months next after the discovery of every such offence, and not afterwards."

Further term of fourteen years, if maker alive.

Sect. 6. "That from and immediately after the expiration of the said term of fourteen years, the sole right of making and disposing of such new and original sculpture, or model, or copy, or cast of any of the matters or things hereinbefore mentioned, shall return to the person or persons who originally made, or caused to be made, the same, if he or they shall be then living, for the further term of fourteen years."

Public exhibition of statue.

It would seem that a statue will be published within the meaning of this Act, by its public exhibition in a gallery, so as to entitle it to protection as from such publication: *Turner* v. *Robinson*, 16 Ir. Ch. R. 516.

9. Newspapers.

Whether copyright exists in a newspaper.

Whether there is any copyright at all in a newspaper has been doubted by Lord *Chelmsford* in *Platt* v. *Walter*, 17 L. T. (N. S.) 159; and his Lordship in that case referred to an observation of *Knight Bruce*, L. J., in *Ex parte Foss* (2 De G. & J. at p. 237), where he spoke of "that which has been called the copyright of the newspapers," as implying a doubt in the mind of that learned judge as to the existence of such copyright. But *Turner*, L.J., in the same case, spoke of copyright in a newspaper as a right "which undoubtedly exists." The decision of the point was not necessary in that case, in which, however, it was held that there is a proprietary right to the publication of a newspaper which is not capable of seizure by the sheriff under an execution, but which is goods and chattels to which the doctrine of reputed ownership is applicable in bankruptcy; see also *Longman* v. *Tripp*, 2 B. & P. 67.

Property in title of newspaper.

Though there is nothing analogous to copyright in the name of a newspaper, the proprietor has a right to prevent any other person from adopting the same

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name for any other similar publication; and this right is a chattel interest capable of assignment: *per Wood*, L. J., in *Kelly* v. *Hutton*, L. R. 3 Ch. A. at p. 708. But this right may be forfeited by laches, if, for instance, the proprietor knowingly lies by, and allows another person to incur expense in bringing out a work with a similar title: *Correspondent Newspaper Co.* v. *Saunders*, 13 W. R. 804.

Cox v. *Land and Water Journal Co.*

In *Cox* v. *Land and Water Journal Co.*, L. R. 9 Eq. 324, the plaintiff, who was the proprietor of the *Field* newspaper, sought to restrain the defendants from publishing in the *Land and Water Journal* lists of hounds alleged to have been copied or colourably altered from similar lists given in the plaintiff's newspaper; it was contended on behalf of the defendants, first, that the plaintiff had no copyright in the article for which he alleged a piracy; and, secondly, that if he had a copyright, he could not sue until the paper was registered under the Copyright Act: *Malins*, V.-C., observed in his judgment that a newspaper did not come within the definition of a "book" given in sect. 2 of the stat. 5 & 6 Vict. c. 45 (see *ante*, p. 676), nor within the provisions of the 19th sect. of that Act with regard to registration of periodical publications, and his Honour accordingly held that a newspaper requires no registration under that Act, but that the proprietor has, without registration, such a right to its contents as will entitle him to restrain others from copying or otherwise appropriating them. The Vice-Chancellor said: "It appears to me that a newspaper, which is the best possible and only definition of such a publication as the *Field*, not being within the provisions of the Act, I must infer that it was not the intention of the Legislature to apply the Act to newspapers (for it is absolutely impossible that it should have missed insertion in some of the sections), and that the circumstance of non-registration throws no difficulty in the way of the plaintiff maintaining his right in law or equity; and though it is seldom worth the while of proprietors to assert the copyright in articles in a newspaper, I am of opinion that, whether it be the letters of a correspondent abroad, or the publication

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of a tale, or a treatise, or review of a book, or whatever else, he requires—I will not say as copyright, but as property—such a property in every article for which he pays under the 18th sect. of the Act, or by the general rules of property, as will entitle him, if he thinks it worth while, to prohibit any other person from publishing the same thing in any other newspaper, or in any other form." The soundness of this decision would seem to be open to grave doubt. It has been seen that the proprietary right in common law in literary works after publication, if it ever existed, was taken away by the statute of Anne, and that copyright after publication depends entirely on statutory enactment: *Donaldson* v. *Beckett*, 4 Burr. 2408, *ante*, p. 671, note (*e*). It would seem clear that this statutory copyright and the protection incident thereto can only be obtained with regard to works mentioned in the Copyright Act and by compliance with the conditions thereby prescribed. On the other hand the definition of a "book" given by the Act includes a "sheet of letter-press" separately published, a description which, it is submitted, is surely wide enough to include a newspaper, and indeed seems very appropriate to such a publication; moreover, it is difficult to see how a newspaper can be said not to fall within the expression "a periodical work, or other work published in a series of books or parts" contained in sect. 19 of the Act, or how a person could acquire any rights in a publication under sect. 18 without the necessity for registration under sect. 19, as the former section applies to precisely the same publications as the latter section, with the addition of the words "or any other *book* whatsoever," which words, according to the opinion of the learned Vice-Chancellor, would not include a newspaper.

Walter v. *Howe.*

The decision above considered was dissented from by *Jessel*, M. R., in the case of *Walter* v. *Howe*, 17 Ch. D. 708, in which it was held that a newspaper is within the Copyright Act, 5 & 6 Vict. c. 45, and requires to be registered under that Act in order to give the proprietor the copyright in its contents and to sue in respect of piracy thereof. His Lordship

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said: "I have been referred to the case of *Cox* v. *Land and Water Journal Co., supra*, in which Vice-Chancellor *Malins* held that a proprietor of a newspaper can sue without joining the author, and without registration under the Copyright Act; but with all respect, I must decline to follow that decision, for it appears to me to be opposed to the plain wording of the Act of Parliament. If I were to decide in accordance with it I should, in my opinion, be virtually overruling the Act."

Enactments as to newspapers.

The Newspapers, Printers, and Reading Rooms Act, 1869 (32 & 33 Vict. c. 24), and the Newspaper Libel and Registration Act, 1881 (44 & 45 Vict. c. 60), contain provisions as to the furnishing of returns as to newspapers and the registration thereof, and other matters for the purpose of facilitating the proof of the publication, and regulating their conduct.

10. Copyright in Designs.

Stat. 46 & 47 Vict. c. 57.

The statute law with regard to copyright in designs is now entirely governed by the Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), Parts III. and V. (*z*), all previous legislation on the subject being repealed: see sect. 113 and the 3rd schedule to the Act (*a*), and by the Designs Rules, 1883, issued by virtue of the present Act. The effect of the present Act is to enable the proprietor of a design, by registering it in the manner and subject to the conditions prescribed in the Act, to obtain a copyright in his design for the term of five years from the date of registration (*b*).

Definitions.

The Act contains the following definitions of the

(*z*) Part II. of this Act, which relates to patents for inventions, has been already considered in Chapter I. of this dissertation.

(*a*) The statutes relating to copyright in designs repealed by the Act of 1883, are the stats. 5 & 6 Vict. c. 100; 6 & 7 Vict. c. 65; 13 & 14 Vict. c. 104; 22 & 23 Vict. c. 70; 24 & 25 Vict. c. 73; and 38 & 39 Vict. c. 93.

(*b*) Under the repealed statutes the term of copyright varied from nine months to five years according to the class under which the article was registered.

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expressions "design," "copyright," and "proprietor" of a design :—

Definition of "design," "copyright."

Sect. 60. "In and for the purposes of this Act—

'Design' means any design applicable to any article of manufacture, or to any substance artificial or natural, or partly artificial and partly natural, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined, not being a design for a sculpture, or other thing within the protection of the Sculpture Copyright Act of the year 1814 (fifty-fourth George the Third, chapter fifty-six).

'Copyright' means the exclusive right to apply a design to any article of manufacture or to any such substance as aforesaid in the class or classes in which the design is registered."

Definition of proprietor.

Sect. 61. "The author of any new and original design shall be considered the proprietor thereof, unless he executed the work on behalf of another person for a good or valuable consideration, in which case such person shall be considered the proprietor, and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to any such article or substance as aforesaid, either exclusively of any other person or otherwise, and also every person on whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise."

These definitions are substantially the same as those contained in the repealed Acts, the decisions under which appear accordingly to be still in force.

The present Act, however, makes no distinction (such as made under the old law) between the application of designs for purposes of ornament, and their application to purposes of utility; the application must, however, relate to the pattern, or shape or configuration, or the ornament of articles or substances, and not to the manufacture of the articles or substances, nor to the combination of parts of articles or substances independently of pattern, shape, configuration, or ornament. Such a manufacture or combination of parts may be the subject of a patent, but not,

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as it is conceived, of statutory copyright in designs: see *Rogers* v. *Driver*, 16 Q. B. 102; *R.* v. *Bessell*, 16 Q. B. 810; *Millingen* v. *Picken*, 1 C. B. 799; *Margetson* v. *Wright*, 2 De G. & S. 420; *Windover* v. *Smith*, 32 Beav. 200; *Houldsworth* v. *M'Crae*, L. R. 2 H. L. 380. In some cases, no doubt, an invention may be a good "design," and also a proper subject for a patent, and in such a case it would seem that the inventor has a concurrent right to apply either for a patent, or for copyright: see *Rogers* v. *Driver*, 16 Q. B. 108.

What is a new and original design.

In order to entitle a design to statutory copyright it must be new and original; that is to say, there must be not merely a slight alteration in outline or form, but some clearly marked and defined difference between that which is to be registered as a new and original design and any design previously in use: *Lazarus* v. *Charles*, L. R. 16 Eq. 117; *Le May* v. *Welch*, 28 Ch. D. 24. But a new and original combination of old patterns may be a "new and original design" so as to be entitled to copyright: *Harrison* v. *Taylor*, 4 H. & N. 815. But the new combination must be a uniform composition, and not the mere collocation of a number of old patterns: *Norton* v. *Nicholls*, 1 E. & E. 761. See also as to claims for copyright in respect of combinations of designs, *Mulloney* v. *Stevens*, 10 L. T. (N. S.) 190; *Lazarus* v. *Charles*, L. R. 16 Eq. 117; *Adams* v. *Clementson*, 12 Ch. D. 714.

Who is the proprietor of a design.

A person will not be deemed the proprietor of a design unless he is the author of it, or has acquired the design or right to apply it either for a good and valuable consideration, or by devolution; and consequently where certain persons purchased certain articles abroad, and imported them into England, without giving any consideration for the design itself or the right to apply it under the terms of the Act, it was held that they were not entitled to copyright in the design of the articles imported: *Lazarus* v. *Charles*, L. R. 16 Ch. D. 117. So where an American manufacturer purported to sell to the plaintiff the exclusive right to sell in England certain articles newly designed and about to be manufac-

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tured, such articles to be supplied exclusively by the manufacturer: it was held that the plaintiff, not having acquired the right to apply the design himself, was not entitled to register the design in his own name as proprietor: *Jewitt* v. *Eckhardt*, 8 Ch. D. 404.

Registration of Designs.]—With regard to the registration of designs, the present Act enacts as follows:

Register of designs.

Sect. 55. "(1.) There shall be kept at the patent office a book called the 'Register of Designs,' wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may from time to time be prescribed (*c*).

"(2.) The register of designs shall be *primâ facie* evidence of any matters by this Act directed or authorised to be entered therein."

Application for registration of designs.

Sect. 47. "(1) The comptroller may, on application by or on behalf of any person claiming to be the proprietor of any new or original design not previously published in the United Kingdom, register the design under this part of this Act.

"(2.) The application must be made in the form set forth in the first Schedule to this Act (*d*), or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the patent office in the prescribed manner (*e*).

(*c*) Upon the sealing of a certificate of registration, the Comptroller is to cause to be entered on the register the several matters above prescribed, and also the date upon which the application for registration was received by the Comptroller, which day is to be deemed the date of the registration: Design Rules, 1883, r. 21. No notice of any trust is to be entered on the register: sect. 85.

(*d*) The following is the form of application given in the First Schedule to the Act (Form E), as modified by the Second Schedule to the Designs Rules, 1883:—

FORM OF APPLICATION FOR REGISTRATION OF DESIGN.

(*a*) Here insert legibly the name and address of the individual or firm.

(*b*) Such as whether it is applicable for the pattern or for the shape.

(*c*) To be signed by the applicant.

You are requested to register the accompanying design in Class in the name of (*a*) of, &c., who claims to be the proprietor thereof, and to return the same to .

Statement of nature of design (*b*)

Registration fees enclosed £ *s.*

(Signed) (*c*)

To the Comptroller,

Patent Office, Designs Branch, 25, Southampton Buildings, Chancery Lane, W.C.

Dated the day of 18 .

(*e*) All communications may be signed by agents: see Designs

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"(3) The application must contain a statement of the nature of the design (*f*), and the class or classes of goods in which the applicant desires that the design be registered (*g*).

"(4.) The same design may be registered in more than one class.

"(5.) In case of doubt as to the class in which a design ought to be registered, the comptroller may decide the question.

"(6.) The comptroller may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal therefrom to the Board of Trade (*h*).

"(7.) The Board of Trade shall, if required, hear the applicant and the comptroller, and may make an order determining whether,

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Rules, 1883, r. 6. And by r. 8 an application for the registration of a design, and all drawings, &c., are to be written, printed, copied, or drawn upon strong, wide-ruled foolscap paper (on one side only of the size of 13 inches by 8 inches, leaving a margin of $1\frac{1}{2}$ inch on the left part thereof, and the signature of the applicants or agents are to be written in a large and legible hand).

(*f*) By r. 9, it is directed that "An application for the registration of a design shall be accompanied by a sketch or drawing, or by three exactly similar drawings, photographs, or tracings of the design, or by three specimens of the design, and shall, in describing the nature of the design, state whether it is applicable for the pattern, or for the shape or the configuration of the design, and the means by which it is applicable."

(*g*) By r. 5, "For the purposes of the registration of designs, and of these rules goods are classified in the manner appearing in the Third Schedule" to the rules. This classification is as follows:—

Class 1. Articles composed wholly or partly of metal not included in Class 2.
,, 2. Jewellery.
,, 3. Articles composed wholly or partly of wood, bone, ivory, papier maché, or other solid substances not included in other classes.
,, 4. Articles composed wholly or partly of glass, earthenware, or porcelain, bricks, tiles, or cement.
,, 5. Articles composed wholly or partly of paper (except hangings).
,, 6. Articles composed wholly or partly of leather, including bookbinding, of all materials.
,, 7. Paper-hangings.
,, 8. Carpets and rugs of all materials, floor-cloths, and oil-cloths.
,, 9. Lace, hosiery.
,, 10. Millinery, and wearing apparel, including boots and shoes.
,, 11. Ornamental needlework on muslin and other textile fabrics.
,, 12. Goods not included in other classes.
,, 13. Printed or woven designs on textile piece goods.
,, 14. Printed or woven designs on handkerchiefs and shawls.

(*h*) The applicant is entitled to be heard by the Comptroller before the application to register the design is refused: see sect. 94 and r. 13.

The procedure with regard to appeals to the Board of Trade is regulated by the Designs Rules, 1883, rr. 16—20.

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and subject to what conditions, if any, registration is to be permitted."

Drawings, &c., to be furnished on application.

Sect. 48. "(1.) On application for registration of a design the applicant shall furnish to the comptroller the prescribed number of copies of drawings, photographs, or tracings of the design sufficient, in the opinion of the comptroller, for enabling him to identify the design; or the applicant may, instead of such copies, furnish exact representations or specimens of the design.

"(2.) The comptroller may, if he thinks fit, refuse any drawing, photograph, tracing, representation, or specimen, which is not, in his opinion, suitable for the official records."

Certificate of registration.

Sect. 49. "(1.) The comptroller shall grant a certificate of registration to the proprietor of the design when registered.

"(2.) The comptroller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, grant a copy or copies of the certificate."

Fees on registration, &c.

Sect. 56. "There shall be paid in respect of applications and registration and other matters under this part of this Act such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade (*i*); and such fees

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(*i*) The fees payable in respect of the registration of designs are thus prescribed in the First Schedule to the Designs Rules, 1883:—

FEES.

	£	s.	d.
1. On application to register one design to be applied to single articles in each class except classes 13 and 14	0	10	0
2. On application to register one design to be applied to single articles in classes 13 and 14	0	1	0
3. On application to register one design to be applied to a set of articles for each class of registration	1	0	0
4. On notice of appeal to Board of Trade against refusal of comptroller to register	1	0	0
5. Copy of certificate of registration, each copy	0	1	0
6. On request for certificate of comptroller for legal proceedings or other special purpose	0	5	0
7. On request to enter name of subsequent proprietor	Same as registration fee.		
8. On notice to comptroller of intended exhibition of an unregistered design	0	5	0
9. Inspection of design of which the copyright has expired, for each quarter of an hour	0	1	0
10. Copy of one such design	Cost according to agreement.		
11. On request to correct clerical error	0	5	0
12. On request for search under section 53	0	5	0
13. On request to enter new address	0	5	0
14. For office copy, every 100 words	0	0	4 (But never less than 1s.)
15. For certifying office copies, MSS. or printed	0	1	0

NOTE.—The term "set" to include any number of articles ordinarily on sale together, irrespective of the varieties of size and arrangement in which the particular design may be shown on each separate article.

shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury shall from time to time direct." Copyright in Designs.

In order to entitle a person to apply for registration of a new and original design not only must he be the proprietor thereof, but the design must not have been previously published in the United Kingdom. In *Dalglish* v. *Jarvie*, 1 Sim. (N. S.) 336, a doubt was expressed whether the term "publication" meant publication of the design itself, or was limited to publication after the design had been embodied and introduced into some fabric; but this doubt seems to be removed by the words "before delivery on sale of any articles" in sect. 50 (2), *infra*. Where a firm who claimed to be the proprietors sent their designs about the country in the hands of their travellers for the purpose of obtaining orders, it was held that this was a previous publication so as to prevent the registration of the designs: *Hunt* v. *Stevens*, W. N. 1878, p. 79. Publication of design.

By sect. 91 the comptroller may, on request in writing, accompanied by the prescribed fee (see *ante*, p. 760, note (*i*)), correct any clerical error in or in connection with an application for registration of a design, or in the name, style, or address of the registered proprietor of a design. Clerical errors in application.

The duration of copyright in designs is now in all cases five years from the date of registration. Sect. 50 of the Act of 1883 enacts that:—

"(1.) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration. Copyright on registration.

"(2.) Before delivery on sale of any articles to which a registered design has been applied, the proprietor must (if exact representations or specimens were not furnished on the application for registration), furnish to the comptroller the prescribed number of exact representations or specimens of the design; and if he fails to do so, the comptroller may erase his name from the register, and thereupon his copyright in the design shall cease."

As to what is to be deemed the date of registration, see *ante*, p. 758, note (*e*).

Copyright in Designs.

The Act contains the following further provisions with regard to copyright in designs :—

Marking registered designs.

Sect. 51. "Before delivery on sale of any articles to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark, or with the prescribed word or words or figures, denoting that the design is registered; and if he fails to do so the copyright in the design shall cease, unless the proprietor shows that he took all proper steps to ensure the marking of the article."

Inspection of registered designs.

Sect. 52. "(1) During the existence of copyright in a design, the design shall not be open to inspection except by the proprietor, or a person authorised in writing by the proprietor, or a person authorised by the comptroller or by the Court, and furnishing such information as may enable the comptroller to identify the design, nor except in the presence of the comptroller, or of any officer acting under him, nor except on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof.

"(2.) When the copyright in a design has ceased, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee."

Information as to existence of copyright.

Sect. 53. "On the request of any person producing a particular design, together with its mark of registration, or producing only its mark of registration, or furnishing such information as may enable the comptroller to identify the design and on payment of the prescribed fee, it shall be the duty of the comptroller to inform such person whether the registration still exists in respect of such design, and if so, in respect of what class or classes of goods, and stating also the date of registration, and the name and address of the registered proprietor."

Cesser of copyright in certain events.

Sect. 54. "If a registered design is used in manufacture in any foreign country and is not used in this country within six months of its registration in this country, the copyright in the design shall cease."

Register marks.

The provisions of this Act with regard to register marks correspond closely with those in the repealed Act, 5 & 6 Vict. c. 100, under which it was held that in order to entitle the proprietor of a design to the benefit of the Act *every* article must bear the mark: *Pierce* v. *Worth*, 18 L. T. (N. S.) 710; *Hunt* v. *Stevens*, W. N. 1878, p. 79. And the rule applied

to articles sold abroad no less than to those sold in this country: *Sarazin* v. *Hamel*, 32 Beav. 145, 151. It was held under the old law that a book of copies of registered designs did not require the registration mark: *Branchardière* v. *Elvery*, 4 Exch. 380. See also as to marking registered designs: *Heywood* v. *Potter*, 1 E. & B. 439; *Fielding* v. *Hawley*, 48 L. T. (N. S.) 639.

How articles are to be marked.

If the article to which the registered design has been applied is included in any of the classes 1 to 12 (see *ante*, p. 759, note (*g*)) it must be marked with the abbreviation "R^{D}."; if it is included in classes 13 or 14 it must be marked with the abbreviation "REG^{D}."

The obliteration of the mark during the process of manufacture will not apparently deprive the proprietor of his copyright in his design: *Fielding* v. *Hawley*, 48 L. T. (N. S.) 639.

Penalty on false representation.

Sect. 105 of the Act imposes a penalty of 5*l.* on any person falsely representing any design applied to any article sold by him as registered when it is not so, that is to say, if he sells the article with the word "registered," or any word or words expressing or implying that registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to, the article: see *Bazley* v. *Walford*, 9 Q. B. 197.

Exhibitions.]—The repealed statutes 22 Vict. c. 3, and 33 & 34 Vict. c. 27, contained provisions saving the rights of proprietors of designs to apply for registration notwithstanding exhibition of the designs, and these provisions are, with modifications, re-enacted by the present Act as follows:—

Exhibition at industrial or international exhibition not to prevent or invalidate registration.

Sect. 57. "The exhibition at an industrial or international exhibition, certified as such by the Board of Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof, provided that both the following conditions are complied with; namely,—

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"(*a.*) The exhibitor must, before exhibiting the design or article or publishing a description of the design, give the comptroller the prescribed notice of his intention to do so; and

"(*b.*) The application for registration must be made before or within six months from the date of the opening of the exhibition."

Form of notice of intended exhibition.

The notice to be given under this section is to be seven days' notice in writing, and the applicant must furnish the comptroller with a brief description of the nature of the design, accompanied by a sketch or drawing thereof, and such other information as the comptroller may in each case require: r. 36. A form of notice is given in the Second Schedule to the Rules, Form L.

Transfer and Transmission of Copyright in Designs.]—Where a person becomes entitled by assignment, transfer, transmission, or other operation of law, to a registered design, the comptroller, on request, and proof of title, is to cause the name of such person to be entered as proprietor of the copyright in the design, in the register of designs: see sect. 87 (*k*).

Registration of transfers, &c.

(*k*) The Designs Rules, 1883, contain the following provisions with regard to the registration of transfers and transmissions of copyright in designs:—

Subsequent proprietors.

Rule 22. "Where a person becomes entitled to the copyright in a registered design, or to any share or interest therein, by assignment, transmission, or other operation of law, or where a person acquires any right to apply the design either exclusively or otherwise, a request for the entry of his name in the register as such proprietor of the design, or as having acquired such right as the case may be (hereinafter called the claimant), shall be addressed to the comptroller, and left at the Patent Office, Designs Branch."

Signature to request.

Rule 23. "Every such request shall, in the case of an individual, be made and signed by the person requiring to be registered as proprietor; and in the case of a firm or partnership, by some one or more members of such firm or partnership, or in either case, by his or their agent respectively duly authorised to the satisfaction of the comptroller; and in like manner by a body corporate, by their agent authorised in like manner."

Particulars in request.

Rule 24. "Every such request shall state the name, address, and description of the claimant, and the particulars of the assignment, transmission, or other operation of law by virtue of which

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The property in a design on the death of the proprietor devolves on his personal representatives: *Jewitt* v. *Eckhardt*, 8 Ch. D. 404; and see sect. 61.

Under the repealed Acts 5 & 6 Vict. c. 100, and 6 & 7 Vict. c. 65, copyright in designs might have been effectually transferred by any instrument in writing purporting to be a transfer, and signed by the proprietor, and forms of transfer and authority to register the same were given. But the present Act is silent on the point.

Under the old Acts *Jessel*, M. R., in *Jewitt* v. *Eckhardt*, 8 Ch. D. 404, held that a partial assignment of, or licence to use, a registered design, must be in writing. The decision might be different under the present Act, but it seems generally advisable that assignments and licences relating to copyright in designs should be reduced to writing, both as preventing disputes between the parties, and as affording to the comptroller satisfactory evidence of the assignee or licensee's title to be put on the register.

Legal Proceedings under the Act.]—The present Act provides that the registered proprietor of a design shall have the following remedies for infringement of his copyright therein :—

Penalty on piracy of registered design.

Sect. 58. "During the existence of copyright in any design—

"(*a.*) It shall not be lawful for any person without the licence

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the request is made, so as to show the manner in which and the person or persons to whom the design has been assigned or transmitted, or the person or persons who has or have acquired such right as aforesaid, as the case may be."

Statutory declaration with request.

Rule 25. "Every such request shall be accompanied by a statutory declaration to be thereunder written verifying the several statements therein, and declaring that the particulars above described comprise every material fact and document affecting the proprietorship of the design or the right to apply the same, as the case may be, as claimed by such request."

Proof of title if required.

Rule 26. "The claimant shall furnish to the comptroller such other proof of title as he may require for his satisfaction."

Corporate name.

Rule 27. "A body corporate may be registered as proprietor by its corporate name."

Form of request.

A form of request to enter the name of a subsequent proprietor of a design with a declaration in support thereof, is given in the Second Schedule to the Rules, Form K.

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or written consent of the registered proprietor to apply such design or any fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered, for purposes of sale to any article of manufacture or to any substance artificial or natural or partly artificial and partly natural; and

"(*b.*) It shall not be lawful for any person to publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, knowing that the same has been so applied without the consent of the registered proprietor.

"Any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding fifty pounds to the registered proprietor of the design, who may recover such sum as a simple contract debt by action in any Court of competent jurisdiction."

Action for damages.

Sect. 59. "Notwithstanding the remedy given by this Act for the recovery of such penalty as aforesaid, the registered proprietor of any design may (if he elects to do so) bring an action for the recovery of any damages arising from the application of any such design, or of any fraudulent or obvious imitation thereof for the purpose of sale, to any article of manufacture or substance, or from the publication, sale, or exposure for sale by any person of any article or substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, such person knowing that the proprietor had not given his consent to such application."

Infringement of copyright in designs.

Under the similar provisions of the repealed statute 5 & 6 Vict. c. 100, s. 8, imposing a penalty on piracy of copyright in a registered design, it was held that the mere manufacture without the proprietor's consent, and during the existence of the copyright, of articles to which a registered design is applied, amounted to piracy even though there might be no intention to sell the articles so manufactured: *M'Crae* v. *Holdsworth,* 2 De G. & Sm. 497.

Delivery up of pirated designs.

Neither the old Designs Acts, nor the Act of 1883, contain any provisions like those contained in the Literary Copyright Act, 1842 (see *ante*, p. 685), as to delivery up of pirated copies to the proprietor of the copyright without any compensation for the cost

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of production, &c. But in *M'Crae* v. *Holdsworth*, *supra*, *Knight Bruce*, L.J., ordered delivery to the plaintiff "for the purpose of being destroyed, the drawing or drawings, point-paper, and the several cards used in applying his design, and also of the articles manufactured by the defendants to which the plaintiff's design had been applied."

Remedy by injunction.

It has been held, with regard to copyright in designs, that equity will interfere by injunction in a proper case to protect the general statutory right of property therein, and will not oblige the plaintiff to rest contented with the specific statutory remedies: *Sheriff* v. *Coates*, 1 Russ. & M. 159.

11. International and Colonial Copyright.

The International Copyright Acts.

International Copyright.]—International copyright is entirely the creature of statutory enactment, and is now regulated by what are known collectively as the International Copyright Acts, 1844 to 1886, viz.: the International Copyright Act, 1844 (7 & 8 Vict. c. 12); the International Copyright Act, 1852 (15 & 16 Vict. c. 12); the Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), sect. 12; the International Copyright Act, 1875 (38 & 39 Vict. c. 12); and the International Copyright Act, 1886 (49 & 50 Vict. c. 33) (*l*). By the stat. 7 & 8 Vict. c. 12, Her Majesty is empowered, by order in council, to grant copyright in works first published abroad. By this Act it is enacted as follows:—

Her Majesty, by order in council, may direct that authors, &c., of works first published in foreign countries shall have copyright therein within her Majesty's dominions.

Sect. 2. "That it shall be lawful for Her Majesty, by any Order of Her Majesty in Council, to direct that, as respects all or any particular class or classes of the following works, namely, books, prints, articles of sculpture, and other works of art, to be defined in such order, which shall after a future time, to be specified in such order, be first published in any foreign country to be named in such order, the authors, inventors, designers, engravers, and

(*l*) The first International Copyright Act, the stat. 1 & 2 Vict. c. 59, related only to books, and was repealed by the stat. 7 & 8 Vict. c. 12.

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makers thereof respectively, their respective executors, administrators, and assigns, shall have the privilege of copyright therein during such period or respective periods as shall be defined in such order, not exceeding, however, as to any of the above-mentioned works, the term of copyright which authors, inventors, designers, engravers, and makers of the like works respectively first published in the United Kingdom may be then entitled to under the hereinbefore recited Acts respectively, or under any Acts which may hereafter be passed in that behalf."

Orders to be published in *Gazette* and laid before Parliament.

The Orders in Council are to be published in the *London Gazette*, and from the time of publication are to have the same effect as if included in the Act: sect. 15. The Orders are also to be laid before both Houses of Parliament, if sitting, within six weeks after issue, and otherwise within six weeks after the commencement of the next session: sect. 16.

The Orders in Council may specify different periods for different foreign countries and for different classes of works: sect. 13.

Authors of works first published in foreign countries not entitled to copyright except under this Act.

With regard to works first published abroad, no copyright or other property is recognised in this country except such as is expressly conferred by the International Copyright Acts. Sect. 19 of the Act of 1844 enacts on this point as follows:—

"That neither the author of any book, nor the author or composer of any dramatic piece or musical composition, nor the inventor, designer, or engraver of any print, nor the maker of any article of sculpture, or of such other work of art as aforesaid, which shall after the passing of this Act be first published out of Her Majesty's dominions, shall have any copyright therein respectively, or any exclusive right to the public representation or performance thereof, otherwise than such (if any) as he may become entitled to under this Act."

Boucicault v. *Delafield.*

Upon the construction of the 19th section, it has been held that a public representation abroad of a dramatic piece is a publication within the meaning of the section, and that this enactment applies to all authors who first publish, or publicly represent, or perform their works or compositions in a foreign country, whether such authors be British subjects or foreigners: *Boucicault* v. *Delafield*, 1 H. & M. 597. In that case Mr. Boucicault, a British subject, had

written a play called "The Colleen Bawn," which was first performed in New York, but duly registered at Stationers' Hall on its first representation in this country, and he sought to restrain the defendant from representing the play without his authority; inasmuch as there was no treaty with the United States of America securing reciprocal protection to works first published in this country, it was impossible for the plaintiff to claim protection under the International Copyright Act, 1844 (see *infra*); but it was contended on his behalf that this Act was an enabling Act, intended to extend to foreigners, on reciprocal terms, the protection which British subjects enjoyed in this country with regard to their literary and dramatic compositions under the former Copyright Acts, and could not be construed so as to take away from British subjects rights which they already enjoy. But *Wood*, V.-C., held otherwise: his honour, after referring to the 19th section, said, "If Mr. Boucicault had first represented his piece in this country, he would have been entitled to the copyright given by the earlier statutes. So also, if he had given his first representation in any country with which a convention had been made under the International Copyright Act, he would have been entitled under that Act to all the same privileges. But in no case is a person to enjoy any rights conferred by the old Acts concurrently with those created by the International Copyright Act. In effect the statute says, that if after the passing of this Act a British subject or other person chooses to deprive this country of the advantage of a publication of a new work, then he may have whatever benefits he may be entitled to under the statute [7 & 8 Vict. c. 12]; but that if he chooses to publish first in a country which has not availed itself of the privileges conferred by this Act, or if in any other case he neglects to comply with the conditions of this Act, he shall be deemed to have excluded himself from the benefits, if any, which he might otherwise have claimed." In *Boucicault* v. *Chatterton*, 5 Ch. D. 267, the Court of Appeal, under similar circumstances, decided adversely to the plaintiff's exclusive

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right of public representation of his play in this country.

Reciprocal protection.

By sect. 14 of the Act of 1844 it was provided that no Order in Council should have any effect unless it stated that reciprocal protection was secured by the foreign power named in such order to works first published in this country. This Act is now repealed (*m*). And the Act of 1886 enacts, with regard to the extent and effect of Orders in Council, as follows :—

Amendment as to extent and effect of order under International Copyright Acts.

Sect. 2. "The following provisions shall apply to an Order in Council under the International Copyright Acts :—

"(1.) The order may extend to all the several foreign countries named or described therein :

"(2.) The order may exclude or limit the rights conferred by the International Copyright Acts in the case of authors who are not subjects or citizens of the foreign countries named or described in that or any other order, and if the order contains such limitation, and the author of a literary or artistic work first produced in one of those foreign countries is not a British subject, nor a subject or citizen of any of the foreign countries so named or described, the publisher of such work, unless the order otherwise provides, shall for the purpose of any legal proceedings in the United Kingdom for protecting any copyright in such work be deemed to be entitled to such copyright as if he were the author, but this enactment shall not prejudice the rights of such author and publisher as between themselves :

"(3.) The International Copyright Acts and an order made thereunder shall not confer on any person any greater right or longer term of copyright in any work than that enjoyed in the foreign country in which such work was first produced."

The Act of 1886 also contains the following important enactment with regard to the contem-

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Repeals.

(*m*) See sect. 12 of the Act of 1886, and the Third Schedule to that Act, which also repeals the stat. 15 & 16 Vict. c. 12, ss. 1–5, and 8–11 inclusive, and the stat. 25 & 16 Vict. c. 68, s. 12, so far as it incorporates any repealed enactment.

poraneous publication of works abroad and in this country (*n*) :— International and Colonial Copyright.

Sect. 3. "(1.) An Order in Council under the International Copyright Acts may provide for determining the country in which a literary or artistic work first produced simultaneously in two or more countries, is to be deemed, for the purpose of copyright, to have been first produced, and for the purposes of this section "country" means the United Kingdom and a country to which an order under the said Act applies. Simultaneous publication.

"(2.) Where a work produced simultaneously in the United Kingdom, and in some foreign country or countries, is by virtue of an Order in Council under the International Copyright Acts deemed for the purpose of copyright to be first produced in one of the said foreign countries, and not in the United Kingdom, the copyright in the United Kingdom shall be such only as exists by virtue of production in the said foreign country, and shall not be such as would have been acquired if the work had been first produced in the United Kingdom."

Sect. 4. "(1.) Where an order respecting any foreign country is made under the International Copyright Acts, the provisions of those Acts with respect to the registry and delivery of copies of works shall not apply to works produced in such country except so far as provided by the order (*o*). Modification of certain provisions of International Copyright Acts.

(*n*) As to contemporaneous publication here and abroad, see *ante*, p. 699.

(*o*) The provisions here referred to, relating to the particulars to be observed as to registry and delivery of copies of works, are contained in sects. 6 to 9 and sects. 11, 12 of the Act of 1844. These sections, in effect, provide that no authors, &c., shall be entitled to the benefit of the Act in respect of their works unless duly registered by entry on the register of the Stationers' Company, in the case of books and dramatic and musical compositions, of the title of the work, of the name and address of the author or composer, and of the proprietor of the copyright, of the time and place of the first publication, representation, or performance abroad; in the case of prints, the name and address of the inventor, designer, or engraver, and of the proprietor of the copyright, and the time and place of first publication; and in the case of articles of sculpture, the name and address of the maker, and the name of the proprietor of the copyright; and in the case of books printed, dramatic and musical compositions, and prints, one complete copy of each work is to be delivered to the officer of the Stationers' Company for deposit in the British Museum. In the case of books published anonymously, an entry of the name and address of the publisher is to be sufficient. The provisions of the stat. 5 & 6 Vict. c. 45, as to entries on the register, are to apply

International and Colonial Copyright.

"(2.) Before making an order in council under the International Copyright Acts in respect of any foreign country, Her Majesty in Council shall be satisfied that that foreign country has made such provisions (if any) as it appears to Her Majesty expedient to require for the protection of authors of works first produced in the United Kingdom (*p*).

Application of Act to existing works.

Sect. 6. "Where an Order in Council is made under the International Copyright Acts with respect to any foreign country, the author and publisher of any literary or artistic work first produced before the date at which such order comes into operation, shall be entitled to the same rights and remedies as if the said Acts and this Act and the said order had applied to the said foreign country at the date of the said production: Provided that where any person has before the date of the publication of an Order in Council lawfully produced any work in the United Kingdom, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such production which are subsisting and valuable at the said date."

Evidence of foreign copyright.

Sect. 7. "Where it is necessary to prove the existence or proprietorship of the copyright of any work first produced in a foreign country to which an Order in Council under the International Copyright Acts applies, an extract from a register, or a certificate, or other document stating the existence of the copyright, or the

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to entries under this Act. Entries grounded on wrongful first publications may, under certain conditions, be expunged or varied. Copies of subsequent editions of books need not be delivered unless they contain additions or alterations.

(*p*) The following Orders in Council have been from time to time issued directing that authors of works first published, represented, or performed in the foreign countries therein respectively named, and duly registered, shall have the same term of copyright as if the works were first published, &c., in this country: Anhalt, 1 April, 1853; Brunswick, 30 April, 1847; France, 16 Jan., 1852, amended by order of 5 Aug., 1875, and see (as to stat. 15 & 16 Vict. c. 12, s. 6) order of 10 Aug., 1875; Hamburg, 16 Dec., 1853, 20 Dec., 1853, and see *infra;* Hanover, 9 Nov., 1847; Hesse, 7 Feb., 1862; Italy, 12 Sept., 1865; Oldenberg, 15 Feb., 1848; Prussia, 1 Sept., 1846, 14 Nov., 1846, 1 April, 1853, and see *infra;* Saxony, 2 Oct., 1846; and the Thuringian Union, 31 Aug., 1847.

In the following cases the orders also empower authors to reserve the right of translating their works for a term of five years from the first publication or representation of an authorised translation: Belgium, 16 Feb., 1855: Hamburg, 16 Feb., 1855; Prussia, 9 Nov., 1855; Sardinia, 5 Feb., 1861; and Spain, 29 Sept., 1857; but the treaty with Spain expired in 1880.

person who is the proprietor of such copyright, or is for the purpose of any legal proceedings in the United Kingdom deemed to be entitled to such copyright, if authenticated by the official seal of a Minister of State of the said foreign country, or by the official seal or the signature of a British diplomatic or consular officer acting in such country, shall be admissible as evidence of the facts named therein, and all Courts shall take judicial notice of every such official seal and signature as in this section mentioned, and shall admit in evidence, without proof, the documents authenticated by it."

International and Colonial Copyright.

With regard to revoking and varying Orders in Council, the Act of 1886 enacts as follows :—

Sect 10. "(1.) It shall be lawful for Her Majesty from time to time to make Orders in Council for the purposes of the International Copyright Acts and this Act, for revoking or altering any Order in Council previously made in pursuance of the said Acts, or any of them.

Making of Orders in Council.

"(2.) Any such Order in Council shall not affect prejudicially any rights acquired or accrued at the date of such order coming into operation, and shall provide for the protection of such rights."

With regard to international copyright in books, the Act of 1844 in effect provides that the same rules of law shall apply to works published first abroad, as if they had been first published in this country. By sect. 3 of that Act it is enacted :—

International copyright in books.

"That in case any such order shall apply to books, all and singular the enactments of the said Copyright Amendment Act, and of any other Act for the time being in force with relation to the copyright in books first published in this country, shall, from and after the time so to be specified in that behalf in such order, and subject to such limitation as to the duration of the copyright as shall be therein contained, apply to and be in force in respect of the books to which such order shall extend, and which shall have been registered as hereinafter is provided, in such and the same manner as if such books were first published in the United Kingdom, save and except such of the said enactments, or such parts thereof, as shall be excepted in such order, and save and except such of the said enactments as relate to the delivery of copies of books at the British Museum, and to or for the use of the other libraries mentioned in the said Copyright Amendment Act."

If the Order applies to books, the copyright law as to books first published in this country shall apply to the books to which the Order relates, with certain exceptions.

International and Colonial Copyright.

Translations.

The Acts of 1844 and 1852, contained certain provisions with regard to translations which have been repealed by the recent Act, which contains the following enactment with regard to translations :—

Restriction on translation.

Sect. 5. "(1.) Where a work being a book or dramatic piece is first produced in a foreign country to which an Order in Council under the International Copyright Acts applies, the author or publisher, as the case may be, shall, unless otherwise directed by the order, have the same right of preventing the production in and importation into the United Kingdom of any translation not authorised by him of the said work as he has of preventing the production and importation of the original work.

"(2.) Provided that if after the expiration of ten years, or any other term prescribed by the order, next after the end of the year in which the work, or in the case of a book published in numbers each number of the book, was first produced, an authorised translation in the English language of such work or number has not been produced, the said right to prevent the production in and importation into the United Kingdom of an unauthorised translation of such work shall cease.

"(3.) The law relating to copyright, including this Act, shall apply to a lawfully produced translation of a work in like manner as if it were an original work.

"(4.) Such of the provisions of the International Copyright Act, 1852, relating to translations, as are unrepealed by this Act, shall apply in like manner as if they were re-enacted in this section."

The unrepealed provisions of the Act of 1852 relating to translations are the following :—

Articles in foreign newspapers, &c., relating to politics may be republished or translated if the source be acknowledged ; and also articles on other subjects, unless the author has signified his intention to preserve the copyright.

Sect. 7. "Notwithstanding anything in the said International Copyright Act [*i.e.*, the stat. 7 & 8 Vict. c. 12], or in this Act contained, any article of political discussion which has been published in any newspaper or periodical in a foreign country, may, if the source from which the same is taken be acknowledged, be republished or translated in any newspaper or periodical in this country; and any article relating to any other subject which has been so published as aforesaid, may, if the source from which the same is taken be acknowledged, be republished, or translated in like manner, unless the author has signified his intention of preserving the copyright therein, and the right of translating the same in some conspicuous part of the newspaper or periodical in which the same was first published, in which case the same shall, without the formalities required by the next following section,

receive the same protection as is by virtue of the International Copyright Act, or this Act, extended to books."

International and Colonial Copyright.

It was held by *Wood*, V.-C., that this dispensation related strictly to the formalities required by sect. 8 of the Act of 1852 (which section is now repealed), but does not exempt the author of the article from the conditions laid down in sect. 3 of the Act of 1844, whereby all the rules of law as to registration, &c., applicable to books first published in this country, are made applicable, with certain exceptions, to books first published abroad: *Cassell* v. *Stiff*, 2 K. & J. 279.

Cassell v. *Stiff*.

With regard to international copyright in prints, articles of sculpture, and other works of art, the Act of 1844 enacts as follows:—

Works of art.

Sect. 4. "That in case any such order shall apply to prints, articles of sculpture, or to any such other works of art as aforesaid, all and singular the enactments of the said Engraving Copyright Acts and the said Sculpture Copyright Acts, or of any other Act for the time being in force with relation to the copyright in prints or articles of sculpture first published in this country, and of any act for the time being in force with relation to the copyright in any similar works of art first published in this country, shall, from and after the time so to be specified in that behalf in such order, and subject to such limitation as to the duration of the copyright as shall be therein contained respectively, apply to and be in force in respect of the prints, articles of sculpture, and other works of art to which such order shall extend, and which shall have been registered as hereinafter is provided, in such and the same manner as if such articles and other works of art were first published in the United Kingdom, save and except such of the said enactments or such parts thereof as shall be excepted in such order."

If the Order applies to prints, sculptures, &c., the copyright law as to prints or sculptures first published in this country shall apply to the prints, sculptures, &c., to which such Order relates.

It has been held, that in order to obtain protection under this section, the proprietor of a foreign engraving must print thereon his name and the date of publication, as required by the stat. 8 Geo. 2, c. 13 (*ante*, p. 745): *Avanzo* v. *Mudie*, 10 Exch. 203.

This Act also empowers her Majesty, by order in council, to extend the benefit of the Act to the authors of dramatic and musical compositions first

Dramatical and musical compositions.

International and Colonial Copyright.

publicly represented or performed abroad. By sect. 5 it is enacted:—

Her Majesty may, by Order in Council, direct that authors and composers of dramatic pieces and musical compositions first publicly represented and performed in foreign countries shall have similar rights in the British dominions.

"That it shall be lawful for Her Majesty, by any Order of Her Majesty in Council, to direct that the authors of dramatic pieces and musical compositions which shall after a future time, to be specified in such order, be first publicly represented or performed in any foreign country to be named in such order, shall have the sole liberty of representing or performing in any part of the British dominions such dramatic pieces or musical compositions during such period as shall be defined in such order, not exceeding the period during which authors of dramatic pieces and musical compositions first publicly represented or performed in the United Kingdom may for the time be entitled by law to the sole liberty of representing and performing the same; and from and after the time so specified in any such last-mentioned order the enactments of the said Dramatic Literary Property Act and of the said Copyright Amendment Act, and of any other Act for the time being in force with relation to the liberty of publicly representing and performing dramatic pieces or musical compositions, shall, subject to such limitation as to the duration of the right conferred by any such order as shall be therein contained, apply to and be in force in respect of the dramatic pieces and musical compositions to which such order shall extend, and which shall have been registered as hereinafter is provided, in such and the same manner as if such dramatic pieces and musical compositions had been first publicly represented and performed in the British dominions, save and except such of the said enactments or such parts thereof as shall be excepted in such order."

By sect. 4 of the Act of 1852, her Majesty was empowered, by Order in Council, to direct that the authors of dramatic works first represented abroad might, for a limited time, prevent the representation of unauthorised translations. This section is now repealed; but by sect. 5 of the Act of 1886 (*ante*, p. 774), where a dramatic piece is first *produced* in a foreign country to which an Order in Council applies, the author or publisher is, unless otherwise directed by the order, to have the same right of preventing the *production* in the United Kingdom of an unauthorised translation, as he has of preventing the *production* of the original work; and by sect. 11 of the same Act, the expression "pro-

duced" includes "performed or represented," and the expression "production" is to be construed accordingly.

International and Colonial Copyright.

By sect. 6 of the Act of 1852 it is enacted that,

> "Nothing herein contained shall be so construed as to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country."

Saving as to imitation of dramatic pieces, &c.

But this limitation of the right of foreign dramatic authors is qualified by the stat. 38 & 39 Vict. c. 12, whereby, after reciting sects. 4 & 5 (now repealed, *ante*, p. 770, note (*m*)), and sect. 6 of the Act of 1852, it is enacted as follows :—

Stat. 38 & 39 Vict. c. 12.

> "In every case in which, by virtue of the enactments hereinbefore recited, any order in council has been, or may hereafter be made, for the purpose of extending protection to the translations of dramatic pieces first publicly represented in any foreign country, it shall be lawful for Her Majesty by Order in Council to direct that the sixth section of the said Act shall not apply to the dramatic pieces to which protection is so extended ; and thereupon the said recited Act shall take effect with respect to such dramatic pieces and to the translations thereof as if the said sixth section of the said Act were hereby repealed."

Section 6 of Act of 1852, not to apply to dramatic pieces in certain cases.

Where a French comedy entitled "*Frou-frou*" was first represented in Paris, and an English version thereof was subsequently published in this country, with the sanction of the authors, under the title of "Like for Like," wherein the scene was transferred to England, English names were given to the characters, and English manners were introduced, and speeches and situations not suitable for representation on the English stage were omitted or altered, it was held that the English version was not a translation, but an imitation or adaptation of the original French play, and that the foreign authors and their assignee were consequently not entitled to the protection of the International Copyright Acts : *Wood* v. *Chart*, L. R. 10 Eq. 193.

English version of foreign dramatic pieces.

A further protection is given by sect. 10 of the Act of 1844 to the authors of books first published abroad, and in respect of which a copyright under

Prohibition of importation of pirated copies of protected works.

International and Colonial Copyright.

the International Copyright Acts has been obtained, by the prohibition of the unauthorised importation of copies of such books printed or reprinted in foreign countries, other than those in which the books were first published; and by providing that offenders against this prohibition shall be liable to a special action on the case at the suit of the proprietor of the copyright, to be brought in the same Courts and in manner prescribed by the stat. 5 & 6 Vict. c. 45, s. 15 (*ante*, p. 681), with relation to similar actions against persons importing and selling books unlawfully printed in the British dominions. This prohibition is extended by sect. 9 of the Act of 1852 to the importation, without the consent of the proprietor of the copyright, of pirated copies and unauthorised translations of works of literature and art, and books, or dramatic pieces, the publication or public representation in the British dominions whereof shall, for the time being, be prevented under any Order in Council; and by the same section the provisions of the stat. 5 & 6 Vict. c. 45, as to forfeiture, &c., of pirated books, are extended to all copies of any works of literature and art, and all translations, the importation of which is prohibited by this Act.

Colonial Copyright.]—By sect. 29 of the Copyright Act, 1842 (5 & 6 Vict. c. 45), that Act is to extend to "every part of the British dominions," which words are, by sect. 2 of the same Act, made to "include all parts of the East and West Indies, and all colonies, settlements, and possessions of the Crown which now are or hereafter may be acquired." The Dramatic Copyright Act, 1833 (3 Will. 4, c. 15) also applies to all parts of the British dominions; so also the Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68).

By sect. 17 of the Copyright Act, 1842, the importation for sale, &c., into any part of the British dominions of copies piratically printed abroad of works printed in the United Kingdom and protected by copyright, was prohibited, and such copies were made liable to seizure by the officers of customs and excise;

International and Colonial Copyright.

and by sect. 23 of the same Act such pirated copies were rendered the property of the proprietor of the copyright: see *ante*, pp. 683, 685. And by the stat. 8 & 9 Vict. c. 93, intituled "An Act to Regulate the Trade of the British Possessions Abroad," books wherein the copyright is subsisting are absolutely prohibited from being imported into the British possessions abroad. This prohibition was modified as regards the colonies by the Colonial Copyright Act, 1847 (10 & 11 Vict. c. 95), whereby, after reciting the Acts above referred to, it is provided that, if any British possession possess an Act or ordinance securing the rights of British authors in such possession, and her Majesty approves of such Act or ordinance, she is empowered, by Order in Council, to suspend during the continuance of such Act or ordinance, the prohibition of the recited Acts against importing into such possession foreign reprints of books first published in the United Kingdom and entitled to copyright therein. Such Orders in Council are to be advertised in the *London Gazette*, and laid before both Houses of Parliament (*q*).

The International Copyright Act, 1886, contains the following provisions with regard to the application of the Imperial and International Copyright Acts to the Colonies:—

Application of Copyright Acts to Colonies (*r*).

Sect. 8. "(1.) The Copyright Acts shall, subject to the provisions of this Act, apply to a literary or artistic work first pro-

(*q*) Orders in Council have been from time to time issued under this Act suspending the operation of the Copyright Acts with respect to the following British possessions: Antigua, 25 June, 1850; Bahamas, 5 June, 1849; Barbadoes, 29 Dec., 1848; Bermuda, 2 March, 1849; British Guiana, 4 Nov., 1851; Canada, 24 Dec., 1850; Cape of Good Hope, 16 March, 1855; Grenada, 13 Jan., 1854; Jamaica, 13 Jan., 1854, 3 July, 1857, and 26 April, 1859; Mauritius, 15 April, 1853; Natal, 22 May, 1857; Nevis, 16 March, 1855; New Brunswick, 8 Sept., 1848; Newfoundland, 7 Aug., 1849; Nova Scotia, 8 Sept., 1848; Prince Edward's Island, 3 Nov., 1848; St. Christopher, 20 Nov., 1849; Sta. Lucia, 19 Nov., 1850; St. Vincent, 27 Aug., 1852, 4 Nov., 1864, and 2 Sept., 1881; and Trinidad, 17 March, 1875.

(*r*) By the Copyright Acts are meant the following statutes: the Engraving Copyright Act, 1734 (8 Geo. 2, c. 13); the En-

International and Colonial Copyright.

duced in a British possession in like manner as they apply to a work first produced in the United Kingdom:

"Provided that—

"(*a.*) the enactments respecting the registry of the copyright in such work shall not apply if the law of such possession provides for the registration of such copyright; and

"(*b.*) where such work is a book the delivery to any persons or body of persons of a copy of any such work shall not be required.

"(2.) Where a register of copyright in books is kept under the authority of the government of a British possession, an extract from that register purporting to be certified as a true copy by the officer keeping it, and authenticated by the public seal of the British possession, or by the official seal or the signature of the governor of a British possession, or of a colonial secretary, or of some secretary or minister administering a department of the government of a British possession, shall be admissible in evidence of the contents of that register, and all courts shall take judicial notice of every such seal and signature, and shall admit in evidence, without further proof, all documents authenticated by it.

"(3.) Where before the passing of this Act an Act or ordinance has been passed in any British possession respecting copyright in any literary or artistic works, Her Majesty in Council may make an order modifying the Copyright Acts and this Act, so far as they apply to such British possession, and to literary and artistic works first produced therein, in such manner as to Her Majesty in Council seems expedient.

"(4.) Nothing in the Copyright Acts or this Act shall prevent the passing in a British possession of any Act or ordinance respecting the copyright within the limits of such possession of works first produced in that possession."

Application of International Copyright Acts to colonies.

Sect. 9. "Where it appears to Her Majesty expedient that an Order in Council under the International Copyright Acts made

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The Copyright Acts.

graving Copyright Act, 1766 (7 Geo. 3, c. 38); the Copyright Act, 1775 (15 Geo. 3, c. 53); the Prints Copyright Act, 1777 (17 Geo. 3, c. 57); the Sculpture Copyright Act, 1814 (54 Geo. 3, c. 56); the Dramatic Copyright Act, 1833 (3 Will. 4, c. 15); the Lectures Copyright Act, 1835 (5 & 6 Will. 4, c. 65); the Prints and Engravings Copyright Act, 1836 (6 & 7 Will. 4, c. 69); the Copyright Act, 1836 (6 & 7 Will. 4, c. 110); the Copyright Act, 1842 (5 & 6 Vict. c. 45); the Colonial Copyright Act, 1847 (10 & 11 Vict. c. 95); and the Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68): see sect. 1, and the Second Schedule to the Act of 1886.

after the passing of this Act as respects any foreign country, should not apply to any British possession, it shall be lawful for Her Majesty by the same or any other Order in Council to declare that such order and the International Copyright Acts and this Act shall not, and the same shall not, apply to such British possession, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such order; and the expressions in the said Acts relating to Her Majesty's dominions shall be construed accordingly; but save as provided by such declaration, the said Acts and this Act shall apply to every British possession as if it were part of the United Kingdom."

International and Colonial Copyright.

International and Colonial Copyright in Designs.] —The Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57) contains the following provisions with a view to facilitate arrangements with foreign countries and the British Colonies for mutual protection of inventions, designs, and trade-marks :—

International arrangements for protection of inventions, designs, and trade marks.

Sect. 103. "(1.) If Her Majesty is pleased to make any arrangement with the government or governments of any foreign state or states for mutual protection of inventions, designs and trade-marks, or any of them, then any person who has applied for protection for any invention, design, or trade-mark in any such state, shall be entitled to a patent for his invention or to registration of his design or trade-mark (as the case may be) under this Act, in priority to other applicants; and such patent or registration shall have the same date as the date of the protection obtained in such foreign state.

"Provided that his application is made, in the case of a patent within seven months, and in the case of a design or trade-mark within four months, from his applying for protection in the foreign state with which the arrangement is in force.

"Provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade-mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade-mark in this country, as the case may be.

"(2.) The publication in the United Kingdom, or the Isle of Man during the respective periods aforesaid of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a descrip-

International and Colonial Copyright.

tion or representation of the design, or the use therein during such periods of the trade-mark, shall not invalidate the patent which may be granted for the invention, or the registration of the design or trade-mark.

"(3.) The application for the grant of a patent, or the registration of a design, or the registration of a trade-mark under this section, must be made in the same manner as an ordinary application under this Act: Provided that, in the case of trade-marks, any trade-mark the registration of which has been duly applied for in the country of origin may be registered under this Act.

"(4.) The provisions of this section shall apply only in the case of those foreign states with respect to which Her Majesty shall from time to time by Order in Council declare them to be applicable, and so long only in the case of each state as the Order in Council shall continue in force with respect to that state."

Provision for colonies and India.

Sect. 104. "(1.) Where it is made to appear to Her Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade-marks, patented or registered in this country, it shall be lawful for Her Majesty from time to time, by Order in Council, to apply the provisions of the last preceding section, with such variations or additions, if any, as to Her Majesty in Council may seem fit, to such British possession.

"(2.) An Order in Council under this Act shall, from a date to be mentioned for the purpose in the order, take effect as if its provisions had been contained in this Act; but it shall be lawful for Her Majesty in Council to revoke any Order in Council made under this Act."

PRECEDENTS.

I. *SPECIFICATION of an Invention of a* Process *and* Means *for* Soldering Aluminium.

Provisional Specification (*s*).

Process and Means for Soldering Aluminium.

I [*inventor*], of, &c., do hereby declare the nature of this invention to be as follows:— Title.

My invention relates to a process and means for soldering the metal aluminium, either to itself or to other metals or alloys, such, for example, as gold, silver, platinum, nickel, cobalt, copper, tin, lead, iron, zinc, German silver, brass, or bronze. For this purpose I provide an alloy of zinc, preferably consisting of zinc, tin, and lead, which I apply to the aluminium at the part or parts where soldering is to be effected, and I also employ as an intermediary a material which will prevent oxidation of the aluminium. Declaration as to nature of invention. Statement.

If necessary I first clean (by scraping or otherwise) the surface of the aluminium, at the part or parts where soldering is to be effected, and I then apply to the said part or parts paraffin, wax, or other suitable matter, which will liquify or flow at a low temperature. I then apply the before-mentioned alloy to the part or parts where soldering is to be effected, and I then apply heat. Before the heating has reached a degree sufficient to injure or cause the oxidization of the aluminium, the paraffin, wax, or its equivalent, will be melted, and will exclude air, whilst and until the alloy becomes melted, and attaches itself to the aluminium where aluminium is to be joined to aluminium, both surfaces to be attached will be thus treated; but where aluminium is to be joined to other metal, or alloy, which can ordinarily be united by soldering, the aluminium only need be prepared in this way. The pieces of metal, with the aluminium so prepared, can be attached by any ordinary or suitable solder. It will be understood that, if

(*s*) No stamp is required on this document.

I. Specification of Invention of Process, &c., for Soldering Aluminium.

desired, the alloy may be coated with the paraffin, wax, or its equivalent, in substitution for, or in addition to, the coating of the aluminium surface.

Dated this —— day of ——, 18—.

[*Signature of Agent.*]

Agent for the said [*inventor*] (*t*).

Complete Specification (*u*).

Process and Means for Soldering Aluminium.

Title.

Declaration as to nature of invention.

I [*inventor*], of, &c., do hereby declare the nature of this invention, and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement:—

Statement.

My invention relates to a process and means for soldering the metal aluminium either to itself, or to other metals, or alloys, such, for example, as gold, silver, platinum, nickel, cobalt, copper, tin, lead, iron, zinc, German silver, brass, or bronze. For this purpose I provide an alloy, preferably consisting of zinc, tin, and lead, which I apply to the aluminium, at the part or parts where soldering is to be effected, and I also employ as an intermediary a material which will prevent oxidation of the aluminium.

If necessary I first clean (by scraping or otherwise) the surface of the aluminium at the part or parts where soldering is to be effected, and I then apply to the said part or parts paraffin, wax, or other suitable matter which will liquify or flow at a low temperature. I then apply the prepared alloy to the part or parts where soldering is to be effected, and I then apply heat. Before the heating has reached a degree sufficient to injure or oxidize aluminium, the paraffin, wax, or other equivalent, will be melted, and will exclude air, whilst and until the alloy becomes melted, and attaches itself to the aluminium. Where aluminium is to be joined to aluminium, both surfaces to be attached will be thus treated, but where aluminium is to be joined to other metal or alloy, which can ordinarily be united by soldering, the aluminium only need be

(*t*) The Provisional Specification and the "Duplicate" thereof must be signed by the applicant or his agent on the last sheet: see Patent Rules, 1883, sched. 2.

(*u*) Stamp £3.

I. Specification of Invention of Process, &c., for Soldering Aluminium.

prepared in this way; the pieces of metal with the aluminium so prepared can be attached by any ordinary or suitable solder. It will be understood that, if desired, the alloy may be coated with the paraffin, wax, or its equivalent, in substitution for, or in addition to, the coating of the aluminium surface.

Whilst not limiting myself to the following procedure, I will give the best means with which I am acquainted for carrying my invention into effect, as applied to soldering two pieces of aluminium together. I prepare an alloy of five parts zinc, two parts tin, and one part lead, and this I roll into thin sheets. I then scrape the parts of the aluminium to be attached, and I coat them with paraffin wax. I then place on each of the surfaces a piece of the alloy, and I apply heat. The wax first melts, and then, when a higher heat is obtained, the alloy melts, and on cooling will be found to be firmly attached to the aluminium surfaces, which can then be soldered together as ordinary soldering is effected. Where aluminium is to be soldered to other metals, which do not require the foregoing preparations, such preparation is, of course, only effected with respect to the aluminium surface.

Claim.

Having now particularly described and ascertained the nature of my said invention, and in what manner the same is to be performed, I declare that what I claim is :—

First :—The process of soldering aluminium, consisting in the employment of a zinc alloy, with the intervention of a substance which will melt at a lower temperature, and prevent oxidation, or injury of the aluminium, substantially as hereinbefore described.

Second :—An alloy, or compound for soldering aluminium, consisting of zinc, tin, and lead in substantially the proportions set forth.

Third :—In soldering aluminium, the use of paraffin wax, or the equivalent thereof, as hereinbefore defined, for preventing injury, or oxidation of the aluminium, substantially as hereinbefore described.

Dated this —— day of ——, 18—.

[*Signature of Agent,*]
Agent for the said [*inventor*] (*p*).

(*p*) The Complete Specification, and the "Duplicate" thereof, must be signed by the applicant or his agent on the last sheet: see Patent Rules, 1883, sched. 2.

II. *SPECIFICATION of an* Invention *of* Improvements *in* Telephonic Apparatus.

Provisional Specification (*q*).

Title. *Improvements in Telephonic Apparatus.*

Declaration as to nature of the invention.

I [*inventor*], of, &c., do hereby declare the nature of this invention to be as follows :—

The principal object of my invention is to provide means, whereby a return current is transmitted to the sending station, to indicate that the bell at a distant station has sounded, in cases where a magneto call apparatus is used.

According to my invention, I provide the armature of the bell with an arm, pendulum, or equivalent moving part, acting as an automatic switch, by which contact is made and broken in the primary circuit of the induction coil, so that a secondary current is sent to the station of origin, or so that a current from a battery is transmitted to the sending station to denote that the bell has sounded at the distant station.

I may use a coil caused to move before the poles of a permanent magnet to generate the return current.

In applying my invention to the —— telephone, I prefer to carry the transmitter in the door of the signalling apparatus, and the receiver on a door or flap below the ordinary door, and covering a box containing the induction coil and switch. The said transmitter and receiver are thus situated at or about right angles to their usual position, so as to economize space, and give room for the battery behind and below the receiver.

To provide a lightning arrester for the telephone, which can be readily renewed, I separate the terminal screw plates by a considerable space, and bridge it by a spring, between which and one of the plates, paper, or other readily renewable non-conducting material, is placed.

Dated this —— day of ——, 18—.

[*Signature of Agent,*]
Agent for the said [*inventor*] (*r*).

(*q*) No stamp is required on this document.
(*r*) As to signature see *ante*, p. 784, note (*t*).

Complete Specification (*s*).

Improvements in Telephonic Apparatus. Title.

I [*inventor*], of, &c., do hereby declare the nature of this invention, and in what manner the same is to be performed, to be particularly described and ascertained in, and by the following statement:— Declaration as to nature of invention.

The object of my invention is to provide means whereby a return current is transmitted to the sending station, to indicate that the bell, or calling device at a distant station has been sounded, or operated, applicable more especially in cases where a magneto call apparatus is used. Statement.

According to my invention, I provide the armature of the bell, or moving part of the calling device, with an arm, pendulum, or equivalent moving part which, owing to the movement for operating the bell or device, vibrates or moves so as to send a return current back to the sending station, to give the required indication. The said pendulum, or its equivalent, may for this purpose act as an automatic switch, by which contact is made and broken in the primary circuit of the induction coil, and an induced current is sent to the sending station, or so that a current from a battery is transmitted to the sending station, to denote that the bell has sounded, or calling device been operated, at the distant station. Or the said pendulum may carry a coil caused to move before the poles of a magnet, so as to induce the necessary return current, or the magnet may similarly be carried by the pendulum, and be caused to move in proximity to a coil for the same purpose.

My invention applies to the operation of the pendulum as a switch, to make and break contact in a circuit with the primary of the induction coil, to send induced currents along the line to the sending station, when the pendulum vibrates after the bell or calling device has operated, so as to act as an automatic switch, but it is to be understood that my invention is not limited in its application of causing the pendulum, or the like, to effect the production of the return current, nor is it limited to this particular form of instrument.

---

s) Stamp, £3.

II. Specification of Invention of Improvements in Telephonic Apparatus.

In the accompanying diagram [*Describe invention, particularly by reference to diagram annexed*].

Having now particularly described, and ascertained the nature of my said invention, and in what manner the same is to be performed, I declare that what I claim is—

Claim.

1. In telephones, the combination with the bell or calling device of a pendulum or automatic switch, operated by the movement, which sounds the bell or actuates the calling device, so as to send a return current, substantially as and for the purpose hereinbefore described.

2. In telephones, the combination with the armature of the bell of a pendulum, which is vibrated by the movement of the armature, and by its vibrations generates or induces a return current, substantially as and for the purpose hereinbefore described.

3. In telephones, the combination with the battery circuit and the primary of the induction coil of a circuit, which is closed and opened by the vibrations or oscillations of a pendulum, or its equivalent operated by the movement, which sounds the bell, or actuates the calling device, substantially as hereinbefore described.

4. In telephones, the combination with the bell armature of the pendulum, and with the battery circuit of the springs, substantially as and for the purpose described.

Dated this —— day of ——, 18—.

[*Signature of agent.*]
Agent for the said [*inventor*] (*t*).

III. *AGREEMENT to* OBTAIN *and* ASSIGN LETTERS PATENT *for an* INVENTION, *in consideration of a Sum of Money, and delivery of certain number of the Patent Articles.*

AN AGREEMENT (*u*), made the —— day of ——,

Parties.

BETWEEN [*inventor*], of, &c., of the one part; and [*purchaser*], of, &c., of the other part. WHEREAS the said [*inventor*]

(*t*) As to signature see *ante*, p. 785, note (*p*).
(*u*) Stamp, 6*d*.

III. Agreement to Obtain and Assign Patent.

claims to have invented a new and improved kind of ——, a plan or drawing of which is hereunto annexed. And whereas the said [*purchaser*] has arranged with the said [*inventor*] for the sale to him of the benefit of the said invention, in the manner and upon the terms hereinafter expressed. NOW WITNESS, that, in consideration of the sum of £—— to the said [*inventor*] now paid by the said [*purchaser*], the receipt whereof is hereby acknowledged, and also in consideration of the agreements hereinafter contained on the part of the said [*purchaser*], he the said [*inventor*] hereby agrees with the said [*purchaser*], in manner following (that is to say), that he the said [*inventor*] will, at any time or times hereafter within the term of fourteen years, to be computed from the day of the date of these presents, upon the request and at the cost of the said [*purchaser*], his executors, administrators, or assigns, take and use all such steps, means, and proceedings, as shall be requisite or proper for obtaining, and use his the said [*inventor*]'s utmost endeavours to obtain, in the name of him the said [*inventor*], a patent for the sole and exclusive making, using, exercising, and vending of the said invention within the United Kingdom of Great Britain and Ireland, and the Isle of Man, as the said [*purchaser*], his executors, administrators, and assigns, may desire, during the term or terms for which patents for inventions are usually granted; And further, that the said [*inventor*], his executors or administrators, will, at any time or times after obtaining any such patent, upon the request and at the cost of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute all such assignments, deeds, matters, and things, as the said [*purchaser*], his executors, administrators, and assigns, shall reasonably require for assigning and transferring unto the said [*purchaser*], his executors, administrators, and assigns, for his or their absolute benefit, the said patent, and the full benefit and advantage thereof; And further, that he the said [*inventor*] will, at any time or times hereafter, upon every reasonable request of the said [*purchaser*], his executors, administrators, or assigns, more particularly and sufficiently describe to him or them, or his or their agents or workmen, either in writing or by personal explanation and instruction, or otherwise, the nature of the said invention, and in what manner the same, and every part thereof, and every process relating thereto, are to be per-

Recital of invention.

Testatum.

In consideration of a sum, and of the purchaser's covenants,

inventor covenants with purchaser,

to solicit grant of letters patent;

and to assign letters patent;

to instruct purchaser in the invention

III. Agreement to Obtain and Assign Patent.

formed or carried into effect and used; And further, that he the said [*inventor*], his executors or administrators, will not, nor shall any person or persons claiming by, from, through, or under him or them, at any time or times hereafter, during the term of fourteen years to be computed from the day of the date of these presents, without the consent or licence of the said [*purchaser*], his executors, administrators, and assigns, either alone or in copartnership, or in any other manner howsoever, directly or indirectly, make or assist in the making of any —— of the new and improved kind hereinbefore mentioned, or in the construction of which the aforesaid invention shall be used; or (except by any specification or specifications which may have to be executed and enrolled for the purposes of the application for the said patent) describe, either in writing or otherwise, to any person or persons other than the said [*purchaser*], his executors, administrators, or assigns, the nature of the said invention, or in what manner the same is to be performed or carried into effect, or give any information, or do or permit, or be party or privy to, any act, matter, or thing whereby or by means whereof the same respectively may be known by any person or persons other than as aforesaid, or whereby or by means whereof the said [*inventor*] may be prevented or hindered from obtaining the said patent for the purposes hereinbefore mentioned; And further, that he the said [*inventor*] has not at any time or times heretofore described, either in writing or otherwise, to any person or persons other than the said [*purchaser*] (*x*), the nature of the said invention, or in what manner the same is to be performed or carried into effect, or given any information, or done or permitted, or been party or privy to, any act, matter, or thing, whereby or by means whereof the same respectively may have been or may be known by any person or persons other than as aforesaid, or whereby or by means whereof he may be prevented or hindered from obtaining the said patent for the purposes hereinbefore mentioned; And further,

not to use invention without purchaser's licence;

nor, except by specification, to disclose invention;

that inventor hath not disclosed invention, and is not prevented from obtaining patent;

for further assurance.

Novelty of invention.

(*x*) Such a previous disclosure is no objection to the novelty of the invention at the time of the grant of the letters patent. To invalidate the patent on the ground of want of novelty, there must be a prior publication to the world, or public use; *ante*, pp. 622, *et seq.*

III. Agreement to Obtain and Assign Patent.

that he the said [*inventor*] will, at any time or times hereafter, upon every request, and at the cost of the said [*purchaser*], his executors, administrators, or assigns, make, do, execute, and perfect all such lawful acts, deeds, disclaimers, amendments, and other matters and things, for the better or more satisfactorily or effectually sustaining or maintaining such patent as aforesaid, and assuring the same, and the full benefit thereof, and of the said invention unto the said [*purchaser*], his executors, administrators, and assigns, as by him or them shall be reasonably required. AND IN CONSIDERATION of the agreements hereinbefore contained on the part of the said [*inventor*], he the said [*purchaser*] hereby agrees with the said [*inventor*], his executors and administrators, that he the said [*purchaser*], his executors or administrators, will, within the space of one year, to be computed from the day of the date of the patent to be so obtained as aforesaid, at his or their cost, make and deliver, for and to the said [*inventor*], his executors and administrators, —— complete, perfect, and well made and finished —— of the new and improved kind hereinbefore mentioned; AND will, from time to time and at all times hereafter, save, defend, and keep harmless and indemnified the said [*inventor*], his heirs, executors, and administrators, and his and their estates and effects whatsoever and whereso-ever, of, from, and against all costs and charges to be incurred or sustained in, about, or in anywise relating to the obtaining of the said patent, and the preparing any specification or specifications which may be necessary for the purposes of the application for the same, and of, from, and against all claims and demands on account thereof. PROVIDED ALWAYS, and it is hereby agreed and declared, that the solicitor or agent to be employed in obtaining the said patent, and in preparing any such specification or specifications as aforesaid, shall be appointed by the said [*purchaser*], his executors, administrators, or assigns; And that the said [*inventor*], his heirs, executors, or administrators, shall not be answerable or accountable for any neglect or default of such solicitor or agent, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

Purchaser agrees to make a certain number of articles, and deliver them to the inventor;

to indemnify inventor from costs of obtaining letters patent.

Proviso that purchaser is to appoint solicitor or agent, and that inventor shall not be responsible for his default.

AS WITNESS, &c.

IV. *AGREEMENT for* WORKING *and* SELLING *an* INVENTION, *in respect of which an* APPLICATION *for a* PATENT *has been made, for the* JOINT BENEFIT *of the* INVENTOR *and* ANOTHER PERSON (*u*).

Parties.

Recitals of application for patent;

of acceptance of specification;

of agreement for arrangement as to working, &c., the invention.

Testatum.

Agreement.

Capitalist to contribute sum for expenses.

Inventor to endeavour to obtain patent, and assign the same when required.

Inventor to communicate improvements.

AN AGREEMENT (*x*), made the —— day of ——, 18—, BETWEEN [*inventor*], of, &c., of the one part; and [*capitalist*], of, &c., of the other part. WHEREAS the said [*inventor*] has, under the Patents, Designs, and Trade Marks Act, 1883, made an application, dated the —— day of —— 18—, number ——, for a patent for an invention of [*title of invention*], which application was accompanied by a complete specification: AND WHEREAS the said complete specification has been accepted: AND WHEREAS the parties hereto have agreed to enter into the arrangements hereinafter mentioned in respect of the said invention, and application, and the patent to be obtained thereupon. NOW THESE PRESENTS WITNESS that it is hereby agreed as follows, that is to say:—

1. The said [*capitalist*] shall, immediately upon the execution of these presents, pay to the said [*inventor*] a sum of £——, to be applied by him towards the expenses of working and developing the said invention.

2. In consideration of the payment so agreed to be made as aforesaid, and of the agreements on the part of the said [*capitalist*] hereinafter contained, the said [*inventor*] shall use his best endeavours to perfect the said invention, and to obtain the grant of the said patent in his own name, and shall, whenever required by the said [*capitalist*] after the granting of such patent, assign the same, so that the same premises may be legally and beneficially vested in the said parties hereto as tenants in common in equal shares, and the said parties hereto shall as well before as after such assignment, be entitled to the said patent in the shares aforesaid.

3. The said [*inventor*], without any further remuneration

(*u*) For the form of Agreement for the right to sell a patented article to be supplied by the patentee, see *ante*, sub tit. AGREEMENTS, Vol. I., p. 622; and for a form of Articles of Partnership between a patentee and a capitalist, see *ante*, sub tit. PARTNERSHIP, p. 416 of this volume.

(*x*) Stamp, 6*d.*

IV. Agreement for Working Invention on Obtaining Patent Applied for.

than the moneys hereinafter agreed to be paid by the said [*capitalist*], will communicate to the said [*capitalist*] all improvements which the said [*inventor*] has already invented, discovered, or made, or may, during the continuance of the said patent, or of any other patent which may become subject to the provisions of these presents, invent, discover, or make in, or in connection with the said invention, and also all improvements, whether patented or not, in, or in connection with the said invention, of which the said [*inventor*] shall become the owner, or have the control.

Inventor to apply for foreign and colonial patents.

4. The said [*inventor*] will also, at the expense in the first instance of the said [*capitalist*], such expense to be considered as an advance, and to be reimbursed as hereinafter mentioned, apply for, and endeavour to obtain in such foreign countries, or British colonies, or dependencies, as the said [*capitalist*] shall think proper, and shall require, the like privilege for the invention comprised in the application, and for any such improvements as aforesaid; and will, as far as practicable, at the request and expense, in the first instance, of the said [*capitalist*], such expense to be considered as an advance, and to be reimbursed as hereinafter mentioned, render all such foreign and colonial patents, and the said improvements available for the exclusive use of the said parties hereto in equal shares; and execute and do every act, deed, and thing which may be necessary or expedient for effectually vesting the same in the said parties hereto in the shares aforesaid.

Capitalist to make advances for working and developing invention.

5. The said [*capitalist*] shall advance from time to time such monies as he shall think fit for working and developing the patent to be obtained on the aforesaid application numbered ——, or the said foreign and colonial patents, or like privileges, or any such patents for improvements as aforesaid (all which patents and privileges are collectively referred to as the "said patents"), and for defraying the costs and expenses of obtaining and completing the said patents respectively, and keeping the same on foot, and for protecting or defending the same from, or obtaining damages or other compensation for infringements, or otherwise defending the said patents, or of obtaining renewals and extension of the term of the patents, or amending the specification thereof, or working, or developing the working comprised in the said patents (hereinafter referred to as the said patented inven-

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tions), or introducing the same to the public, or exercising or using the said patented inventions, or any of them, or any parts thereof respectively, or for any purpose whatever in connection with the said patents, or any of them; and the said advances, and also the aforesaid sum of £—— shall be repaid to the said [*capitalist*] as hereinafter mentioned; and if there shall at any one time during the continuance of this agreement be owing to the said [*capitalist*] in respect of such advances in the aggregate, the sum of £——, or upwards, then any excess of such advances over the sum of £——, shall carry interest at the rate of £5 per cent. per annum, from the date when such excess shall have become due to the said [*capitalist*], until the same shall be paid.

Charge of advances on patents.

6. All advances made by the said [*capitalist*] as aforesaid, and all interest shall be, and the same are hereby charged upon the said patents as a first charge upon the same.

Application of royalties, proceeds of sale of patent rights &c.

7. All monies which shall be received by way of royalties, or otherwise, as the consideration for any licence granted for the use of the said patented inventions, or any of them, or any part thereof respectively, or which shall be received as the proceeds of the sale, or other disposition of the said patents, or any share or interest therein, or which shall be received in respect of any working, using, or exercising by, or on behalf of the said parties hereto, or either of them, of the said patented inventions, or any of them, or any part thereof respectively, or which shall in any manner whatever arise, or be received out of, or in respect of the said patents, or any of them, all which monies are hereinafter referred to as "the proceeds of the said patents," shall be applied as follows—that is to say, in the first place, in payment of the costs and charges incurred with the consent of the said [*capitalist*], attending the licence, sale, disposition, or working in respect of which the same respectively shall be received; and in the next place, and as a charge upon the said proceeds of the said patents, and in priority to any other payments hereinafter mentioned, in payment to the said [*capitalist*], of all advances made by the said [*capitalist*] as aforesaid, with interest thereon, in the events, and at the rate, and in manner aforesaid; And in the next place, in payment of all expenses of working the said patents (hereinafter referred to as the patent expenses, and defined as hereinafter mentioned); And the balances which shall remain of the proceeds of the said

patents, after making the same payments aforesaid, shall be divided between the parties hereto in equal shares.

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8. For the purposes of this agreement, the expression "patent expenses" shall mean and include all monies which, with the consent of the said [*capitalist*], shall be expended for any of the purposes mentioned in the 5th Clause of these presents, which shall not have been defrayed by monies advanced by the said [*capitalist*].

Definition of "patent expenses."

9. There shall be set aside yearly out of the aforesaid proceeds of the said patents and premises, after payment of the said costs, charges, and interest (if any), and of the said patent expenses, such a sum, not exceeding £—— in any one year, as the said [*capitalist*] shall think proper, as a reserve fund for meeting contingencies, and providing monies for working and developing the patents, or for any of the purposes mentioned in the 5th Clause of these presents, and such reserve fund may from time to time be drawn upon and applied for any of the purposes aforesaid, as and whenever the said [*capitalist*] shall think fit.

Reserve fund.

10. The said [*inventor*] shall give as much time and attention as may be necessary for working and developing the said patented inventions, and shall use his best endeavours to promote the success thereof, but the said [*capitalist*] shall not be bound to give more time or attention thereto than he shall think proper.

Inventor to devote attention to working patent.

11. During the continuance of the arrangement hereby made, neither of the said parties hereto shall, without the consent of the other of them, grant or agree to grant any licence for working the patented inventions, or any of them, or any part thereof, or sell or dispose of his share or interest in the said patents or any of them, or any part thereof, or use or exercise the said invention, or make any payment, or incur any expenses, debts, or liabilities in respect of the said patents or patented inventions, and in case any payment, debt, or liability shall be so made or incurred without such consent, the same shall be made or incurred on the separate and individual account of the party making or incurring the same, and shall be borne by him exclusively, without any right to resort to the proceeds aforesaid of the said patents, and the other of the said parties hereto shall be indemnified by him in respect of the same.

Neither party to grant licences, &c., without consent of the other.

12. The said patents, patented inventions, and premises

Inventor alone to work the

IV. Agreement for Working Invention on Obtaining Patent Applied for.

shall be worked, and the business thereof shall be carried on in the name of the said [*inventor*] alone as patentee; and proper accounts shall be kept by him of all payments made, and moneys received, and liabilities incurred in respect thereof, and of all transactions relating thereto, and all moneys received in respect of licences, sales, and dispositions or otherwise, in respect of the said patents, shall be paid into a bank to an account to be kept in the joint names of the said parties hereto, and shall not be paid out except upon the joint cheque of both parties. The books of account and other documents shall be kept in the custody of the said [*inventor*] at his office or such other place in London as the said parties hereto may agree upon, but so as that the said [*capitalist*] may at any time have access thereto. The accounts relating to the said patents, patented inventions, and premises shall be made up and balanced half-yearly on the —— day of ——, and the —— day of ——, or oftener if the said parties hereto shall so agree.

patent; rendering accounts to capitalist.

Inventor to take all proceedings necessary for protecting patents.

13. The said [*inventor*] shall, during the continuance of the arrangements hereby made, take all such proceedings as the said [*capitalist*] shall require for keeping up the said patents, and protecting and defending the same from, and obtaining damages or other compensation for, infringement, or otherwise defending the said patents, or any of them, or obtaining renewals or extensions of the term of the said patents, or any of them, or amending the specifications thereof; and the costs and expenses of all such proceedings as last aforesaid shall be defrayed in the first instance by the said [*capitalist*], and shall be considered as advances by him within the meaning of the 5th Clause of these presents, and so far as not defrayed by the said [*capitalist*], shall be considered as part of the patent expenses as hereinbefore defined.

Clause negativing partnership.

14. Nothing herein contained shall be construed as constituting a partnership between the said parties hereto.

Duration of arrangement.

15. The arrangement hereby entered into shall remain in force until the expiration of the term of the patent to be granted in respect of the said application, number —— aforesaid, and of any renewal or extension thereof, and during any further patents, whether British, Colonial, or foreign, to be obtained for the said invention, or any such improvements as aforesaid, in case both the said parties hereto shall so long live: PROVIDED ALWAYS that it shall be lawful for the said

Proviso for

IV. Agreement for Working Invention on Obtaining Patent Applied for.

[*capitalist*] at any time hereafter, to determine the said arrangement, upon giving to the said [*inventor*], or leaving for him at his last known place of business or abode in England, —— calendar months previous notice in writing of an intention so to do: And in the event of the said arrangement being determined by the death of either party, or by notice as aforesaid, the said patents, and any extension or renewal thereof, and the proceeds of the said patents to be received in respect of any licences, sales, working or using of the patented inventions which have been granted, effected, or taken place previously to such determination as aforesaid, shall, subject to the payment thereout of the costs, charges, advances, interest, and patent expenses as aforesaid (subject to any charge thereon under the provisions hereinbefore contained in favour of the said [*capitalist*] for unpaid advances and interest), belong to the said parties hereto in equal shares; and each of the parties hereto, or their respective executors, administrators, or assigns, shall thenceforward be at liberty and entitled to work, use, and exercise the said patented inventions, and to grant licences (not being exclusive licences) for working and using the same, or to sell, assign, or otherwise dispose of his share and interest in the said patents, without being liable to account to the other of such parties, his executors, administrators, or assigns, for the profits, royalties, or moneys to be derived from the same.

determining arrangement by notice.

As witness, &c.

V. *LICENCE (non-exclusive) to use a* NEW INVENTION, *in consideration of a Gross Sum, by Deed-poll, to cease on the Death of the Licensee, or on Alienation, &c. (y).*

Recital of patent;

TO ALL TO WHOM THESE PRESENTS SHALL COME (*z*), [*patentee*], of, &c., sends greeting: WHEREAS her present Majesty, by a patent, dated the —— day of ——, and numbered ——, granted unto the said [*patentee*] the sole and exclusive licence, power, privilege, and authority, of making, using, and vending a certain machine [*describe invention*] for the term of fourteen years from the date thereof: AND WHEREAS the said [*patentee*] has agreed to permit [*licensee*], of the city of ——, to make, sell, and dispose of the same upon the terms and conditions, and in the manner hereinafter mentioned. NOW THESE PRESENTS WITNESS, that, in consideration of the sum of £——, now paid by the said [*licensee*] to the said [*patentee*], the receipt whereof the said [*patentee*] hereby acknowledges, the said [*patentee*] hereby grants unto the said [*licensee*] full and free liberty, licence, power, privilege, authority, and permission, to make, use, exercise, sell, and dispose of [*invention*], in the said patent mentioned, for the term of —— years from the date thereof: PROVIDED ALWAYS, and these presents are upon this express condition, that, if the said [*licensee*] shall die during the said term, or shall at any time hereafter assign or make over the licence hereby given, or the benefit thereof, or of any part thereof, to any person or persons whomsoever, or the same shall by any other means become vested in any other person or persons, without the consent in writing of the said [*patentee*], his executors or administrators, these presents and every thing herein contained shall cease and be utterly

of agreement for licence.

Testatum.

Licence.

Proviso for cessor on licensee's death, &c.

Form of licence.

(*y*) A licence to use a patent should be granted by deed-poll only in cases where the consideration is a gross sum, and the transaction is of a very simple character; generally it will be necessary that the grant should be by indenture fully stating the terms and conditions of the grant, and securing the observance and performance of such terms and conditions by the covenants of the respective parties.

(*z*) Stamp, 10*s.*; all licences to use a patent are now required to be under seal, see *ante*, p. 655.

void: PROVIDED ALSO, that nothing herein contained shall operate as a warranty of the validity of the said patent (*a*). V. Licence by a Patentee. Exclusion of warranty.

IN WITNESS whereof, the said [*patentee*] hath hereunto set his hand and seal this —— day of ——.

VI. *LICENCE* (*non-exclusive*) *by a* PATENTEE *to a* PARTNERSHIP FIRM *for* MAKING *and* SELLING *a* PATENT INVENTION; PROVISOES *that* PATENTEE *shall* NOT *be* COMPELLABLE *to bring* ACTIONS, *&c., to* MAINTAIN PATENT, *but that* LICENSEES *may, on his refusal to do so,* DETERMINE *the* LICENCE; *other* SPECIAL CLAUSES.

THIS INDENTURE (*b*), made the —— day of ——, 18—, BETWEEN [*patentee*], of, &c. (who and his executors, administrators, and assigns, are hereinafter, unless the contrary appears, included in the expression the patentee), of the one part, and [*licensees*], of, &c. (who and the survivors or survivor of them and the executors or administrators of such survivor and their or his partners or partner and permitted assigns are hereinafter, unless the contrary appears, included in the expression the licensees), of the other part: WHEREAS her present Majesty, by a patent dated the —— day of ——, 18—, and numbered ——, granted unto the patentee special licence, full power, sole privilege, and authority, from time to time, and at all times hereafter during the term of fourteen years from the date of the said patent, to make, use, exercise, and vend within the United Kingdom of Great Britain and Ireland and the Isle of Man an invention of [*describe title of invention*]: AND WHEREAS the patentee has agreed to grant unto the licensees a licence to use, exercise, and vend the said invention comprised in the said patent upon the terms and conditions hereinafter set forth: NOW THIS INDENTURE

Parties.

Recitals: of grant of patent;

of agreement for licence.

Testatum.

(*a*) See, as to this proviso, *post*, p. 804, note (*d*).
(*b*) Stamp, 10*s.*; see *ante*, p. 798, note (*z*).

VI. Licence to Make and Sell Patented Machines.

Grant of licence to make and sell patented machines.

WITNESSETH that, in pursuance of the said agreement, and in consideration of the royalties and covenants hereinafter reserved and contained, and on the part of the licensees to be paid and performed, he, the patentee, grants unto the licensees full and free licence and authority during all the residue now to come and unexpired of the term of fourteen years by the said patent, to use, exercise, and practice the said invention, and to make and sell the machines comprised in the specifications thereof: YIELDING AND PAYING unto the patentee, or to such person or persons as he may appoint during such time as the licence intended to be hereby granted shall continue valid and in force, for every article sold by the licensees which shall be made according to the said invention or any part thereof, the royalty or sum of £——; such royalty to be payable by quarterly payments within —— days after the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in each year, the first payment for the period between the date of these presents and the —— day of —— next to be made within —— days after the said —— day of —— next, and all such payments of royalty to be made without any deduction or abatement whatsoever: And the licensees hereby jointly and severally covenant with the patentee in manner following, that is to say: that they, the licensees, will enter in proper books to be provided and kept by them, true, plain, and perfect entries of all machines which shall be made by them according to the said invention, or any part thereof, and of all machines sold by them, which shall be made by them according to the said invention, or any part thereof: AND will, within —— days after the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year during the continuance of this licence deliver to the patentee, or to such person or persons as he may appoint, a true return in writing, signed by the licensees, of all the machines which shall have been made or sold by them, under or by virtue of this licence, since the date of these presents, or during the quarter then ended, as the case may be; the first return to be delivered within —— days after the —— day of —— next as aforesaid, and to embrace the period within the date of these presents and the last-mentioned day; and if required so to do will verify such returns respectively, from time to time, by statutory declaration to be made by the licensees: AND will, from time

Reddendum of royalty.

Covenants by licensees:

to enter in books of account all machines made and sold;

to render quarterly accounts of machines made and sold;

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to time, within —— days after the said —— day of —— and the said ensuing quarterly payments respectively, pay unto the patentee, or to such person or persons as aforesaid, such a sum of money in respect of the royalties as upon the face of such returns as aforesaid shall appear to be, or shall otherwise be then due: And will, in the manufacture of the said machines, use and employ good materials and workmanship, and not sell the same, or any of them, at less prices than the selling prices from time to time adopted by the patentee: Provided that before making any change in such prices the patentee will give to the licensees one calendar month's notice of such intended change: And will mark or cause to be marked, or stamp or cause to be stamped, all machines made or sold under this licence in some conspicuous place with the words "[*patentee's*] patent," and with a continuous number showing the number which, from time to time, shall have been so made; And will permit and suffer the patentee, or such other person or persons as he may appoint, to inspect all the books of account of the licensees relating to the manufacture or sale of the machines aforesaid under this licence, and to take copies or extracts of or from the same, or any part thereof, and further that they, the licensees, will, on discovery of any infringement of the said patent, forthwith notify the same to the patentee: And that they, the licensees, will not knowingly do or be party to any act or thing which may tend to invalidate the said patent: And that the licensees will not assign or execute any instrument purporting to assign the licence hereby granted, without the consent in writing of the patentee; And in the event of any infringement of the said patent by any person or persons that they, the licensees, will, at the cost of the patentee, render to him or them all the assistance or information in their power, to enable the patentee (at his own expense) to restrain further infringements of the said patent, and to recover damages for any past infringements thereof: Provided always that nothing herein contained shall be construed as placing the patentee under any obligations to take proceedings for the purpose of restraining or recovering damages for infringements, or as in any manner exonerating the licensees from payment and observance of the royalties and covenants herein reserved and contained by reason that the profits of the licensees, their executors or administrators, from the use of the said invention, may be

to pay royalty quarterly according to accounts rendered;

to use good materials and sell at prices approved by patentee.

Proviso as to changes in prices;

to mark machines with patentee's name;

to permit patentee to inspect accounts, and take copies, &c.;

not to invalidate patent;

not to assign licence without consent;

to give information and assistance in preventing infringements.

Proviso that patentee shall not be compellable to take proceedings against infringers.

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diminished on account of such infringements being permitted: PROVIDED ALWAYS that if any infringement of such letters patent shall be made and brought to the notice of the patentee, and if for three months after such notice the patentee shall fail to take and effectually prosecute with due diligence proceedings to the satisfaction of the licensees for restraining such infringement, the licensees may by written notice put an end to this licence and all the clauses herein contained, without prejudice to any rights or liabilities on either side which may be then subsisting in respect of any prior breach of any of the covenants herein contained: PROVIDED ALWAYS and these presents are upon the express condition that if the licensees shall, without such consent as aforesaid, assign or execute any instrument purporting to assign the licence hereby granted, or shall make default in payment of the royalty hereinbefore reserved within the time hereinbefore appointed for the payment thereof respectively, or shall in any manner make default in performance of any of the covenants herein contained, and which ought to be performed by them, and in any of such cases it shall be lawful for the patentee by writing under his hand to give to the licensees, or leave for them at their or one of their usual or last known places or place of business or abode in England, notice of the intention of the patentee to determine this present licence at the expiration of one calendar month from the service of such notice, in case the licensees shall have assigned these presents without such consent as aforesaid, or in case of the non-payment of royalty, or breach of the other covenants, at the expiration of one calendar month, unless the royalty unpaid or the covenant or covenants which shall not have been performed is or are respectively paid or performed, as the case may be, within the said period of one calendar month; AND in the first of such cases, and also in the last-mentioned case, unless such royalty unpaid, or such covenant or covenants which shall not have been performed shall be respectively paid or performed before the expiration of the last-mentioned period of one calendar month, these presents and every clause, matter, and thing herein contained, and the licence hereby granted, or intended so to be, shall be void and of none effect, as to the future

Proviso that if patentee shall not take such proceedings, licensee may determine the licence (*c*).

Power for licensor to determine licence on non-payment of royalty, or breach of covenant.

(*c*) For a form of a general power for the licensee to determine the licence by notice, see *post*, p. 821.

operation thereof, but without prejudice to any rights or liabilities which may be then subsisting on either side in respect of any prior breach of any of the covenants herein contained: PROVIDED ALSO that if during the continuance of the licence hereby granted the said patent of the —— day of ——, 18—, shall be pronounced to be invalid by a decision of the highest tribunal by which such sentence can be pronounced, these presents shall be void as to the future operation thereof, but without prejudice to any rights or liabilities which may be then subsisting on either side in respect of any prior breach of any of the covenants or agreements herein contained: PROVIDED ALWAYS that in case the patentee shall at any time, whilst this licence shall be in force, grant any licence or permission to any other person or persons for the use of the said inventions and improvements in Great Britain or Ireland or the Isle of Man, and shall reserve any royalty or payment which shall be lower than the respective royalties hereinbefore mentioned in respect of the non-exclusive licence hereby granted, then the royalties or payments to be thenceforward payable to the patentee shall be reduced to an amount equal to the largest royalty reserved in respect thereof from any other person or persons, so that at all times the licensees shall be placed upon as favourable a footing in all respects as regards the subjects of the non-exclusive licence hereinbefore granted: PROVIDED FURTHER that the patentee shall be at liberty, from time to time, and at all times hereafter, without the consent or concurrence of the licensees, to make or file any disclaimer or memorandum of alteration of any part of either the title of the said patent or the specification thereof respectively, as he or they may be advised; AND the patentee hereby

VI. **Licence to Make and Sell Patented Machines.**

Proviso for avoidance of licence if patent shall be pronounced bad.

Proviso for reduction of royalties if other licences at lower royalties shall be granted.

Power for patentee to file disclaimers.

Covenants by licensor for title (*d*);

(*d*) It seems prudent to insert in licences to use patents, express covenants for title, &c., and not to rely on the implied statutory covenants. It is often of material importance to a licensee to have the security of covenants by the licensor for title, quiet enjoyment, and further assurance, and it seems very doubtful whether a licence is a "conveyance" within the meaning of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), sect. 2 (v), so as to imply such covenants by making a licensor "convey as beneficial owner." A licence is certainly not a "conveyance" in the ordinary legal acceptation of the term; it is essentially a mere personal permission to do an act which, without such permission, would not be lawful, and passes no estate or interest in property; it would not therefore appear safe to assume

As to insertion in licenses of express covenants for title.

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covenants with the said licensees that, notwithstanding any act, deed, matter, or thing hereinbefore done or executed or suffered by him, the said patentee has now in himself good right and full power to grant to the licensees full and free licence and authority to use the said invention comprised in the patent and every part thereof, in manner aforesaid (but so that neither this covenant nor anything herein contained shall operate as a warranty of the validity of the said patent); AND FURTHER that the right to use the said invention to the extent and in the manner and subject to the reservations and covenants hereinbefore mentioned and contained shall be quietly and peaceably exercised, used, and enjoyed by the licensees without any interruption or disturbance whatsoever by or from the patentee, or any person or persons claiming under or in trust for him; AND also that he, the patentee, and all and every persons or person having or claiming any right or interest to or in the patent under or in trust for him, will at all times hereafter, at the request and expense of the licensees, make, do, execute, and perfect every such act, deed, matter, and thing as shall be necessary for more perfectly and effectually vesting in the licensees the full and absolute licence and authority to use the said patent invention in manner and subject to the reservations and covenants aforesaid: PROVIDED LASTLY, and it is hereby agreed and declared, that if any dispute, question, or difference shall arise between the parties to these presents or their respective executors, administrators, or assigns or permitted assigns respectively, touching these presents, or any clause or thing herein contained, or the construction hereof, or any matter in any way connected with these presents, or the operation hereof, or the rights, duties, or liabilities of either of the said parties hereto in connection with the premises, then and in every or any such case the matters in difference shall be referred to two arbitrators or the umpire, pursuant to and so as with regard to the mode and

for quiet enjoyment;

for further assurance.

Arbitration clause (*e*).

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that a licence is a "dealing with *property*," so as to be a "conveyance" within the meaning of the Act.

The above form of covenants expressly negatives warranty of the validity of the patent. For a form warranting such validity, see the next Precedent, *post*, p. 811. The warranty should always be expressly affirmed or negatived.

(*e*) For a form of Arbitration Clause providing for reference to three arbitrators, see next Precedent, *post*, p. 812.

consequences of the reference, and in other respects to conform to the provisions in that behalf contained in the Common Law Procedure Act, 1854, or any other subsisting statutory modification thereof, and upon every or any such reference the arbitrators and umpire shall respectively have power to examine the parties and witnesses upon oath or affirmation, and either to fix, settle, and determine the amount of cost of the reference and award respectively, or incidental thereto, to be paid by both parties or either party, or to direct the same to be taxed either as between solicitor and client, or otherwise to direct and award, when and by to whom such costs shall be paid.

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In witness, &c.

VII. *LICENCE (not exclusive) by a* Patentee *and his* Partner *to a* Joint Stock Company, *to* exercise *and* use *an* Invention *of a* Process *for the manufacture of Paraffin Oil, and to* make *and* sell products *of such manufacture.* Proviso *that* Patentee *shall, if required, bring* Actions, *&c., to maintain* Patent Rights, *on being* indemnified *by the Licensees, against costs, &c.*

THIS INDENTURE (*f*), made the —— day of ——, 18—, Between [*patentee*], of, &c., of the first part; the said [*patentee*] and [*his partner*], of the second part; and the —— Company, Limited, carrying on business at ——, in the county of ——, of the third part: Whereas her Majesty, by Letters Patent, under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date the —— day of ——, 1880, granted unto the [*patentee*] her special licence, full power, sole privilege and authority, that he the [*patentee*], and such others as he the [*patentee*] should at any time agree with, and no others might make, use, exercise, and vend

Parties.

Recitals: of grant of letters patent under the old law;

(*f*) Stamp, 10*s.*; see *ante*, p. 798, note (*z*).

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within England, Wales, and the town of Berwick-upon-Tweed, and the Islands of Guernsey, Jersey, Alderney, and Sark, and in all her Majesty's Colonies and Plantations abroad, his invention of "Improvements in, &c. [*set out title*]" for the term of fourteen years from the date of the said Letters Patent: And a specification of the said invention was duly filed by the [*patentee*] in compliance with a condition in that behalf in the said Letters Patent contained: And whereas by an indenture, dated the —— day of ——, 1881, and made between the said [*patentee*] of the one part, and the [*partner*] of the other part, the [*patentee*] declared that he and his executors, administrators, and assigns, would stand possessed of, and interested in the said Letters Patent, in trust for the parties hereto of the second part, in the shares and proportions in the said indenture now in recital mentioned: And whereas the said parties hereto of the second part, have agreed to grant unto the company a licence to put in practice the said invention, comprised in the said Letters Patent, upon the terms and conditions hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that it is hereby agreed and declared between, and by the several parties hereto, and the [*patentee*], so far as regards the observance and performance by himself respectively, and any persons claiming under him, of the covenants and agreements hereinafter contained, hereby covenants with the company; And the parties hereto of the second part, so far as regards the observance and performance of the joint covenants and agreements hereinafter contained, hereby jointly covenant with the company; And the company, so far as regards the observance and performance by themselves and any persons claiming under them, of the covenants and agreements hereinafter contained, hereby covenant with the [*patentee*], and as a separate covenant with the parties hereto of the second part, as follows, that is to say:—

of enrolment of specification;

of partnership between patentee and another;

of agreement for licence.

Testatum.

Mutual covenants.

Interpretation clause.

1. In the construction of these presents (unless a contrary intention appears), the expression "the patentee" shall mean and include the said [*patentee*], and his executors, administrators, and assigns; the expression "the parties hereto of the second part," shall mean, and include the said [*patentee*] and [*partner*], and the survivor of them, and the executors and administrators of such survivor, and their or his partner or partners for the time being, and assigns; the expression

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"the company," shall mean, and include the —— Company, Limited, and their permitted assigns; the expression "the patent," shall mean the said Letters Patent, dated the —— day of ——, 18—, granting to the [*patentee*] the licence, power, privilege, and authority aforesaid in respect of the patent invention; and the expression "the patent invention," shall mean the said invention entitled [*set out title*].

Grant of licence.

2. In consideration of the reservations and covenants hereinafter contained, and on the part of the company, to be paid, observed, and performed respectively, he the said [*patentee*], at the request of the said [*partner*], testified by his executing these presents, hereby grants, and the said parties hereto of the second part, do, and each of them doth hereby grant and confirm unto the company, full and free liberty, licence, and authority to use, exercise, or put in practice the patent invention within England, Wales, and the town of Berwick-upon-Tweed, during the residue now to come and unexpired, of the said term of fourteen years by the patent granted.

Reddendum of royalty.

3. The company shall pay unto the [*patentee*], or to such person or persons as he may appoint, for the liberty, licence, and authority hereby granted, during the continuance thereof, the royalty, or sum of —— pence for every gallon of crude oil, or first product of the distillation of coal, which shall be made by the company in exercise of the said invention, or in the manufacture of which the said invention, or any part thereof, shall be used or employed, such royalty to be payable as hereinafter mentioned.

As to entry in books of account of coals consumed;

4. The company will enter in proper books, to be provided and kept by them upon the premises where the manufacture of paraffin oil, or oil containing paraffin, or paraffin shall for the time being be carried on by them, true, plain, and perfect entries of all coals used by them in the said manufacture, and of the quantities and descriptions of such coals, and the places from which, and times at which such coals shall have been obtained and received; And also of the number of retorts or furnaces which shall from time to time be upon the said premises, and employed in the manufacture of the oil, or other products aforesaid, and of the number of such retorts or furnaces which shall be at work on each day, and the number of times in each day that each such retort is charged, and the

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quality and description of the coal with which it is charged; And also of the number of gallons respectively of crude oil, or product of the first distillation which shall be obtained from each charge of the said retorts, and of the number of gallons of refined oil, which shall be made therefrom, and of the quantity of the said refined oil that shall be sold, and of the quantity of paraffin, and lubricating oil, and railway grease which shall be made by the company.

and of furnaces at work;

and of quantity of products made, and sold.

Company to keep and render accounts of sales, &c.;

5. The company will preserve all invoices, bills of parcels, and documents relating to the purchase of coals for the purposes of the said manufacture; And will keep correct accounts of all sales of any oil or other products, in the manufacture of which the said invention, or any part thereof, shall be employed, and the persons to whom, and prices for which such sales shall be made; And will on the first day of every calendar month, transmit to the patentee, or to such person or persons as he may appoint, true copies of the accounts hereinbefore mentioned, signed on behalf of the company, by the managing director and secretary thereof for the time being, and if required so to do, will verify the same by statutory declaration of such managing director and secretary; And will, within fifteen days after the delivery of every such account, pay unto the patentee, or such person or persons as aforesaid, such a sum of money in respect of the said royalties hereby reserved, as shall on the face of the said accounts appear to be due.

to pay royalties in accordance with accounts.

Company to permit patentee to inspect books and works.

6. The company will permit and suffer the patentee, or such person or persons as aforesaid, to inspect all the books of account of the company relating to the manufacture of oil, and other products aforesaid, and to take copies, abstracts, or extracts thereof, or therefrom; And also to inspect the said works of the company, at all reasonable times, when the manufacture of oil, or such other products as aforesaid shall be carried on.

Company to permit patentee's agent to be present at manufacture of products;

7. The company will also permit one person to be duly authorised in that behalf, from time to time, by the said [*patentee*], his executors, administrators, and assigns, to be always present at every place in England, Wales, and in the town of Berwick-upon-Tweed, where the manufacture of oil, or such other products as aforesaid, shall be carried on by, or on behalf of the company, and to see the whole process of manufacture, and to take notes of the quantity of oil, or other

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products manufactured, and of such other particulars relating to the said manufacture as such person shall think proper; And will give to every such person all the information which he may reasonably require to enable him to ascertain the process of manufacture, and quantities of coal brought into the works, and the quantities and kinds of products obtained therefrom; And will give due notice to the said [*patentee*], his executors, administrators, or assigns, of any alteration in, or addition to the said place or places of the said manufacture of oil and other products aforesaid.

to give notice of alteration in place of manufacture.

8. The company will sell all oil or other such products as aforesaid, which shall be manufactured by them in exercise of this licence, under the name of "[*patentee's*] patent," and will cause the cans, vessels, or boxes in which such oils or products shall be sent out from the works to be marked with a square brand, having red letters on a white ground, on the ends of the cans, vessels, or boxes, the letters to be one inch in height at least, and in straight lines, with the words "Paraffin oil manufactured at the —— works under [*patentee's*] patent," whenever such oils, or other products as aforesaid shall be sold by themselves, and not mixed with other products or substances.

Company to sell products in labelled cans, &c.

9. The company will not sell any oil, or such other products as aforesaid, which shall be made in exercise of the said invention, or any part thereof, in mixture or combination with any other substance, unless such mixture or combination shall be made for the purpose of manufacturing substances to be used as railway grease, or for purposes of lubrication; And will not, without the express permission in writing hereto of the parties hereto of the second part, in every case first obtained, sell any crude oil, or first product of distillation, to any person or persons, or body politic or corporate, who shall have upon his, or their works any retort, vessel, or apparatus adapted, or capable of being employed for the distillation of coal; And whenever such permission as aforesaid shall be obtained, will make arrangements with the respective purchasers of such crude oil, obliging such purchasers respectively to permit the said parties hereto of the second part, their executors, administrators, or assigns, or some person or persons duly authorised by them, at all reasonable times to inspect the works of such purchasers respectively; And will not sell any crude oils, except upon

Company not to sell products mixed with other substances, &c., without consent of proprietors.

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the terms of such arrangement being assented to by the purchaser or purchasers.

Company not to sell crude products to persons purchasing the same from other persons.

10. The company will not sell any crude oils, or first product of distillation, to any person or persons, or body politic or corporate, who to the knowledge of the said [*licensee*], his executors or administrators, shall purchase any crude oil from any person not being a licensee of the said parties hereto of the second part, their executors, administrators, or assigns.

That the patentee shall bring actions to defend the patent, &c., and shall be reimbursed all costs, expenses, &c., by the company.

11. The patentee, at all times hereafter, during the continuance of the patent, may, and at the request of the company shall, take all such steps, and institute or defend all such actions or proceedings, as shall be necessary for the purpose of keeping on foot the patent, and enforcing, or defending the patent right, or preventing infringements, or recovering damages against infringers, and to deal with respect to any such proceedings, as if he were the absolute owner, unfettered by this agreement; and the company shall at all times, on demand pay, and reimburse to the patentee, the costs, losses, and expenses which may be incurred by him, in keeping on foot the patent, or in enforcing or defending the patent right, or in bringing or prosecuting actions or proceedings against the infringers thereof, or in any way connected therewith, it being the true intent and meaning of these presents that the patentee shall be at liberty to, and if the company shall so require, shall be compellable to keep on foot and maintain the patent, and all the privileges and advantages thereof, for the joint benefit of the parties hereto, and their representatives, but that all the costs, losses, and expenses which may be incurred in so doing, or in anywise relating thereto, shall be borne and paid exclusively by the company.

Patentee to be at liberty to grant other licences.

12. Nothing herein contained shall prevent the patentee from granting licences to use the patent invention to such persons or person, other than the company, at such times, for such terms, and with, and subject to such reservations, covenants, and conditions as the patentee shall think proper: Provided that no such licence shall be granted at a lower royalty, or subject to less restrictive covenants or conditions, or generally on a footing more favourable to the licensee or licensees than this present licence.

That unless company duly perform their

13. If at any time or times hereafter the company shall not duly observe and perform the several covenants and

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agreements herein contained, and on their part to be observed and performed (the question whether they have or have not duly observed or performed the same to be a matter of reference to arbitration under the provision hereinafter contained, if the parties differ about the same), it shall be lawful for the patentee, by any writing under his hand, to give to the company, or leave for them at their registered office, notice of his intention to put an end to this agreement, and in such case this agreement shall, at the expiration of one calendar month from the time when such notice shall have been given or left as aforesaid, absolutely cease and determine, and become null and void, as to the future operation thereof, but without prejudice to any rights, or remedies, or liabilities on either side, which may be subsisting in respect of any prior breach of this agreement, or otherwise arising out of the same.

part, the patentee may end the agreement by a month's notice.

14. Each of them the said [*patentee*] and [*partner*] hereby covenants with the company that notwithstanding any act, matter, or thing hereinbefore done, or executed, or omitted, or suffered by either of them the said [*patentee*] and [*partner*], the patent is now good, valid, and subsisting, and not void or voidable, and that the patentee has now in himself good right, and full power to grant to the company full and free licence and authority to use the patent invention, and every part thereof, and to make and sell products manufactured in accordance therewith in manner aforesaid; And further, that the right to use the patent invention, and to sell such products as aforesaid, to the extent, and in the manner, and subject to the reservations and covenants hereinbefore mentioned and contained, shall be quietly and peaceably exercised, used, and enjoyed by the company, without any interruption or disturbance whatsoever by or from the parties hereto of the second part, or either of them, or any person or persons claiming under, or in trust for them or him respectively; And also that the patentee, and the parties hereto of the second part, and all and every persons or person having, or claiming any right or interest to, or in the patent under, or in trust for them, or any of them, will at all times hereafter,

Covenants for title (*g*);

for quiet enjoyment;

for further assurance.

(*g*) As to inserting express covenants for title, &c., see *ante*, p. 803, note (*d*).

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at the request and expense of the company, make, do, execute, and perfect every such act, deed, matter, and thing as shall be necessary for more perfectly and effectually vesting in the company the full and absolute licence and authority to use the patent invention, and to make and sell the products manufactured in accordance therewith, in manner, and subject to the reservations and covenants aforesaid.

Arbitration clause (*h*).

15. If at any time hereafter, either during the continuance of the said patent, or after the expiration thereof, any dispute or difference shall arise between the patentee and the company, concerning any matter in anywise relating to, or arising out of these presents, which shall not be settled between and by the parties within one calendar month, or if any matter shall arise which is hereinbefore declared to be a subject of reference to arbitration, then such dispute, difference, or matter shall be referred to three arbitrators, one of them to be chosen by each of the parties in difference, and the third to be chosen by the said two arbitrators so to be named as aforesaid, immediately, or within ten days next after the appointment of the said two first arbitrators; and the decision of the three arbitrators so to be chosen, or of any two of them, shall be final and conclusive.

In witness, &c.

VIII. *EXCLUSIVE LICENCE to use several* Patented Inventions within *a* District *in* consideration *of a* Gross Sum *payable by* instalments.

Parties.

Recitals:

THIS INDENTURE (*i*), made the —— day of ——, 18—, between [*Licensor*], of, &c., of the one part, and [*Licensee*], of the other part. Whereas Letters Patent under the great Seal

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(*h*) For another form of Arbitration Clause, see *ante*, p. 804.
(*i*) Stamp 10*s*.

VIII. **Exclusive Licence to Use Patent within a District.**

of the United Kingdom, bearing date the —— day of ——-, 18—, (No. —), were granted unto [*patentee*] for securing to him his executors administrators and assigns, or such others as he might agree with, the exclusive use within the United Kingdom of Great Britain and Ireland, the Channel Islands and the Isle of Man, of an invention of "An improved construction of ——," being a communication from abroad, from [*foreign inventor*] for fourteen years from the date of the said Letters Patent and a Specification of the said invention was on the —— day of ——, 18—, filed in the Great Seal Patent Office, in compliance with a condition in that behalf in the said Letters Patent. And whereas by an Indenture dated the —— day of ——, 18—, and made between the said [*patentee*] of the one part, and the said [*foreign inventor*] of the other part: The said [*patentee*] assigned unto the said [*foreign inventor*], the said Invention and Letters Patent together with all privileges, benefits and advantages to the same belonging: To hold unto the said [*foreign inventor*] his executors administrators and assigns for residue of the term granted by the said Letters Patent: And whereas by an indenture, dated the —— day of ——, 18—, and made between the said [*foreign inventor*] of the one part, and the said [*licensor*] of the other part: The said [*foreign inventor*] granted and assigned unto the said [*licensor*] his executors administrators and assigns, full and free licence, power and authority to use by himself or others the invention mentioned in the said Letters Patent, according to the specification thereof, at any place or places situate in Great Britain or Ireland, together with full and free power and authority to grant sub-licences to any person or persons to use the said invention within Great Britain and Ireland, or any part or parts thereof respectively To hold the said licence, powers and authorities, and to take, receive and enjoy the benefit and emolument to be made thereby or derived therefrom respectively, unto the said [*licensor*] his executors administrators and assigns: And whereas by a Patent dated the —— day of ——, 18—, (No. ——), special licence, full power and sole privilege and authority were granted unto the said [*patentee*], that the said [*patentee*] by himself, his agents and licensees and no others might at all times thereafter during the term of years therein mentioned, make, use, exercise, and work within the United Kingdom of Great Britain and Ireland

of grant of letters patent and filing of specification under the old practice, on behalf of foreign inventor;

of assignment of letters patent to foreign inventor;

of grant of licence to use letters patent to licensor with power to grant sub-licences;

of grant of a patent under the present practice to licensor;

VIII. Exclusive Licence to Use Patent within a District.

of agreement for exclusive licence to use patented inventions.

and the Isle of Man, for the term of fourteen years from the date of the said last mentioned Patent, an invention of "Improvements in ——:" And whereas the said [*licensor*] has agreed with the said [*licensee*] for the grant to him of a licence to or for them, the said [*licensee*], his executors, administrators, and assigns, exclusively of all other persons whomsoever, to use, exercise, vend and enjoy the said inventions in respect of which the said two several Letters Patent or Patents were respectively granted, (which two several Letters Patent or Patents are hereinafter referred to as "the said Patents,") together with all improvements, modifications, or variations, of the said inventions, which may at any time hereafter during the existence of these presents, be patented, registered, or made by the said [*licensor*] for the sum of £——, to be paid by the instalments at the times, and in manner hereinafter appearing, and payment of the said instalments to be secured by the covenant of the said [*licensee*], and in other respects upon the terms and conditions hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the sum of £—— to be paid by the said [*licensee*] to the said [*licensor*] by the instalments, and at the days and times hereinbefore mentioned, with interest at the rate of £—— per cent. per annum on each of the said instalments, from the day on which the same ought to be paid until actually paid, and also in consideration of the reservations and covenants hereinafter expressed and contained, and on the part of the [*licensee*] to be observed and performed, he the said [*licensor*] hereby absolutely and irrevocably grants unto the [*licensee*], his executors, administrators and assigns, and to such person or persons as he the said [*licensee*] or his assigns shall from time to time licence, empower or authorize in that behalf full and free, and also exclusive licence and authority to make use and put in practice, and vend the said inventions of "an improved construction of ——," and of "improvements in ——," respectively, in accordance with, and to the full extent of the exclusive rights and privileges granted and conferred by the said Patents respectively; Together with all improvements, modifications, or variations of the said inventions, which may at any time hereafter during the existence of these presents be patented, registered or made by the said [*licensor*], such licence and authority to be

Testatum.

Grant of exclusive licence to use and sell patented invention within a district.

VIII. Exclusive Licence to Use Patent within a District.

exercised and enjoyed within that part of the County of ——, which lies within ten miles of the Town Hall, of ——, but not further or otherwise: To HOLD, use, exercise, vend and enjoy the said licence, authority and liberty hereinbefore granted unto and by the [*licensee*] his executors, administrators and assigns, and all such persons as he or they respectively shall thereunto authorize for the residue now unexpired of the said terms of fourteen years, and fourteen years granted by the said Patents, respectively. And also for and during any further or other term or terms which may at any time or times hereafter be granted to the said [*licensor*] or his assigns, for the sole and proper benefit of the said [*licensee*], his executors, administrators and assigns absolutely: And the said [*licensee*] hereby covenants with the said [*licensor*], his heirs, executors, or administrators to pay unto the said [*licensor*] his heirs, executors, administrators, or assigns, the sum of £——, at the times and in manner following, that is to say, the sum of £—— on the —— day of ——, 18—, the further sum of £—— on the —— day of ——, 18—, and the remaining sum of £—— on the —— day of ——, 18—: AND FURTHER, that in case any of the said instalments should not be duly paid on the day when the same ought to be paid, as aforesaid, the same respectively shall carry interest at the rate of £—— per cent. per annum from such day, until the same respectively shall be paid: PROVIDED ALWAYS, that in case the said Patents or either of them should be decided by a court of competent jurisdiction in England to be null and void, and the validity thereof, as to the material and essential parts of the said inventions should not forthwith thereupon be restored by a proper disclaimer or alteration or otherwise, then and in such case all instalments of the said sum of £——, which shall not have become due previously to the day on which the said Patents or either of them shall be declared void, shall cease to be payable, and the covenants in these presents contained for the payment of such instalment or instalments shall thereupon be null and void: AND the said [*licensee*] hereby further covenants with the said [*licensor*] that he the said [*licensee*], his executors, administrators, or assigns, will at all times during the continuance of this licence, execute with all reasonable speed, and in

Habendum.

Covenant by licensee to pay gross sum by instalments

and interest on unpaid instalments.

Proviso that if patents should be held bad, instalments shall cease to be payable.

Covenants by licensee: to execute orders;

VIII. Exclusive Licence to Use Patent within a District.

a proper and workmanlike manner, all orders which he or they, himself or themselves, receive or obtain, or which may be obtained by the said [*licensor*] his executors, administrators, or assigns, and of which he or they shall give notice in writing to the said [*licensee*], his executors, administrators, or assigns, to be made according to the said patented inventions or either of them or any part thereof respectively: And further [*to use good materials, and sell at approved prices, and proviso as to change of prices, ut ante, p.* 801; *to mark products with licensor's name, ut ante, p.* 801; *to permit licensor to inspect works, ut ante, p.* 801]: And further will communicate to the said [*licensor*], his executors, administrators, and assigns all and every improvement and improvements in the said inventions comprised in the said Patents respectively, which the said [*licensee*], his executors, administrators, or assigns, or servants, or workmen, shall make or discover during the continuance of this licence, in order that the said [*licensor*], his executors, administrators, and assigns may have the benefit of all such improvements in connection with products similar to those manufactured within the provisions of these presents: [*Power for licensor to determine licence on default in payment of instalments or breach of licensee's covenants, ut ante, p.* 802 *mutatis mutandis*]. And the said [*licensor*] hereby covenants with the said [*licensee*] that [*Covenants for title and quiet enjoyment mutatis mutandis, ut ante, pp.* 803, 804; *and add*]: And that he the said [*licensor*] will not, nor shall his executors, administrators, or assigns at any time during the continuance of this licence make or file any disclaimer or memorandum of alteration of the said Patents, or either of them, without the consent in writing of the said [*licensee*], his executors, administrators, or assigns: And also that he the said [*licensor*] will not, nor shall his executors, administrators, or assigns, at any time hereafter during the subsistence of the exclusive privileges hereby granted in any manner either directly or indirectly use, exercise, or vend the said inventions or either of them or grant any licence to any other person or persons whomsoever to use or exercise the same, within the district aforesaid: And also [*Covenant for further assurance, ut ante, p.* 804]: And the said [*licensor*] hereby acknowledges the right of the said [*licensee*] to production of

to use good materials, &c.

Not to disclaim.

Not to use invention or grant licences within the district.

Acknowledgment of licensee's

the said Patents respectively, and to delivery of copies thereof: And he hereby undertakes for the safe custody thereof.

VIII. Exclusive Right to Use Patent within a District.

In witness, &c.

right to production of patents.

IX. *LICENCE* (*non-exclusive*) *to use several patented* Inventions *and* Improvements *thereon.* Reservation *of* Minimum Royalty.

THIS INDENTURE (*i*), made the —— day of ——, 18—, Between [*licensors*], of, &c., (who and their executors, administrators, and assigns are hereinafter, unless the contrary appears, included in the expression "the licensors"), of the one part, and [*licensees*], of, &c. (who and their executors, administrators, and permitted assigns are hereinafter, unless the contrary appears, included in the expression "the licensees"), of the other part: Whereas [*patentee*], of, &c., has from time to time obtained grants of the several letters patent and patents mentioned in the schedule hereunder written (and which are hereinafter collectively referred to as the said patents) for the several inventions relating to improvements in ——, the titles of which inventions are particularly stated in the same schedule, for the several terms of 14 years mentioned in the same schedule respectively: And whereas by three several indentures of assignment, dated respectively the —— day of ——, 18—, the —— day of ——, 18—, and the —— day of ——, 18—, and respectively made between the said [*patentee*], of the one part, and the said [*licensors*], of the other part, for the considerations therein respectively mentioned, the said patents and the inventions therein respectively comprised were assigned, unto and became and are now vested in the licensors for the respective residues of the said several terms of 14 years by the said patents granted respectively: And whereas the licensors have agreed

Parties.

Recitals: of grants of patents;

of assignments of patents;

of agreement for licence.

(*i*) Stamp, 10*s.*; see *ante*, p. 798, note (*z*).

IX. Licence to Use Several Patents and Improvements.

to grant to the licensees a licence to use and put in practice the said inventions comprised in the said patents respectively and improvements thereon as hereinafter mentioned, to the extent and upon and subject to the terms and conditions hereinafter expressed: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement and in consideration of the reservations and covenants hereinafter contained, and on the part of the licensees to be paid and performed, they, the licensors, hereby grant unto the licensees full and free liberty, licence, and authority to use, exercise, and put in practice in the manufacture at the works of the licensees at —— aforesaid, of, &c. [*describe products to be manufactured*], but not further or otherwise, or elsewhere, the inventions comprised in the said patents respectively, and also all improvements thereon, which may hereafter be patented by the licensors, or which the licensors, their executors, administrators, or assigns, or servants, or workmen (such assigns, servants, or workmen being under the control of the licensors, their executors, administrators, or assigns), shall make or discover during the continuance of this licence, To HOLD, exercise, and enjoy the said licence and authority hereby granted and the privileges and advantages to be derived therefrom unto and by the licensees during all the respective residues now to come and unexpired of the said several terms of 14 years each by the said patents respectively granted, and during the terms of any patents for such improvements as aforesaid, and any extension or extensions of such respective terms; YIELDING AND PAYING therefor unto the licensors, or to such person or persons as they may appoint, during such time as this licence shall continue valid and in force, the royalties or sums of money hereafter mentioned, that is to say, for every ton of —— which shall be made by the licensees at their aforesaid works, by the use of the said inventions, or any of them, or any part thereof respectively, the sum of ——; and for every ton of such —— as aforesaid, which shall be made as aforesaid, the sum of ——, the said respective royalties to be paid without any deduction or abatement whatsoever, and to be paid quarterly by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, 18—, in every year without deduction, the first quarterly payment to be made on the —— day of ——,

Testatum.

Grant of licence.

Reddendum of tonnage royalties on quantities of products manufactured;

IX. Licence to Use Several Patents and Improvements.

but if it shall happen that the royalties aforesaid for any one year during the continuance of this licence from and after the —— day of —— next shall not amount in the whole to the sum of £——, YIELDING AND PAYING unto the licensors as aforesaid, on the —— day of —— in such year, and as and by way of minimum royalty for such year the sum of £——, without deduction, which said sum shall be accepted in full of all royalties payable in and for such year, the first annual payment to be made on the —— day of ——, 18—; PROVIDED ALWAYS that the licence and authority hereby granted shall be exercisable by all persons who shall hereafter become members of the licensees' firm, but shall be one entire and indivisible licence, and not confer separate rights on the several persons who may compose such firm: AND the licensees hereby covenant with the licensors that they, the licensees, will enter in proper books to be provided and kept by them for that purpose, upon the premises where the manufacture aforesaid shall be carried on by them, true, plain, and perfect entries of the —— which shall be manufactured by the licensees by the use of the said inventions or improvements, or any of them or any part thereof respectively: AND will permit the licensors, and any person duly authorised by them in that behalf, as often as the licensors shall think desirable (but not oftener than once in any one month during the continuance of this licence), to inspect, so far as may be necessary in that behalf, the works of the licensees, where the said —— is manufactured by the use of the said inventions or improvements as aforesaid, at all reasonable times, when and so long as the manufacture aforesaid shall be carried on under this licence with the view of ascertaining the quantity of the —— manufactured by the use of the said inventions or improvements; And also to examine the said books and the entries aforesaid, and to make copies or extracts of or from the same or any part thereof, and will, if and when required by the licensors, cause such books or any part thereof to be verified by statutory declaration, to be made by the person who ordinarily shall be in charge of the said books, or by some other person whom the licensors shall consider able to give exact information concerning such books and the contents thereof; AND also that they, the licensees, will, on the —— day of ——, 18—, the —— day of ——, the —— day of ——, and the —— day of —— in each year (commencing on the ——

Reddendum of minimum royalty.

Proviso that licence shall extend to future members of licensee's firm.

Covenants by licensees:

to keep books of account;

to permit licensors to inspect works, and examine books;

IX. **Licence to Use Several Patents and Improvements.**

day of —— next), deliver to the licensors, or to such person or persons as they may appoint, true and accurate accounts, signed by the licensees, of all —— which shall have been manufactured by the licensees by the use of the said inventions or improvements, or any of them or any part thereof respectively as aforesaid, at their works aforesaid, during the quarter of a year preceding the quarter day in respect of which the account is furnished; And, if required so to do, will verify such accounts by statutory declaration to be made by the licensees, or such one or more of them as may be required by the licensors; And will, at the time of the delivery of every such account, pay unto the licensors, or to such person or persons aforesaid, such a sum of money in respect of the said royalties hereby reserved as shall, on the face of the said account, appear to be then due, without deduction; And in case it shall appear that the royalties hereinbefore reserved for any one year during the continuance of this licence from and after the —— day of ——, 18— next, shall not amount in the whole to the sum of £——, then that the licensees will pay unto the licensors, on the —— day of —— in such year, as and by way of minimum royalty for such year, the sum of £——, and will make the first of such payments on the —— day of ——, 18—; And further that they, the licensees, will use their best endeavours to detect infringements of the said patents or any of them, and on discovery thereof will forthwith notify and disclose all their information respecting the same in writing to the licensors, and that they will not do or be party to any act or thing which may tend to invalidate the said patents or any of them, and also that they will communicate in detail to the licensors all improvements on the said inventions comprised in the said patent respectively which the licensees, or servants, or workmen, make or discover during the continuance of this licence, in order that the licensors may have the benefit and advantages of such improvements in connection with works other than those of the licensees; And that the licensees will not assign or grant any sub-licence, nor execute any instrument purporting to be an assignment of or sub-licence under this present licence without the consent in writing of the licensors: Provided always that it shall be lawful for the licensees at any time during the continuance of this licence, at

to deliver quarterly accounts;

and pay royalties;

to endeavour to detect infringements;

to communicate improvements;

not to assign.

Provision as to infringements.

IX. Licence to Use Several Patents and Improvements.

their own cost, but in the name of the licensors, to bring, take, and maintain all such actions or proceedings as shall be necessary for the purpose of keeping on foot the said patents or either of them, or enforcing or defending the patent rights, or preventing infringements, or recovering damages against infringers [*Power for licensors to determine licence by notice, ut ante*, p. 802, *mutatis mutandis* (*k*)]: PROVIDED ALSO that it shall be lawful for the licensees, at any time hereafter, if they shall be desirous of determining the licence hereby granted, by writing under their hands, to give to the licensors, or leave for them at their usual or last known place of business in England, three calendar months' notice of their intention to determine this licence on one of the quarterly days aforesaid, and in such case, at the expiration of such notice, these presents and every clause, matter, and thing herein contained and the licence hereby granted shall be void and be of none effect as to the then future operation thereof, but without prejudice to any right of action or remedy which may be then subsisting on either side in respect of any prior breach of any of the covenants herein contained or otherwise in relation to these presents: PROVIDED ALWAYS that in case this present licence shall be determined as lastly hereinbefore mentioned, for the purposes of the minimum royalty hereinbefore reserved, the year in which such determination shall take place shall consist of the four quarters next immediately preceding such determination, and a proportionate part of such minimum royalty if accruing by reason of deficiency of tonnage royalties for such period shall be payable up to the time of the expiration of the said notice: PROVIDED ALSO that in such case it shall be lawful for the licensors, at all times thereafter during the respective terms, whether original or renewed, of the said patents, to inspect at all reasonable times within the limitations hereinbefore mentioned the works of the licensees where the manufacture aforesaid shall be carried on, for the purpose of enabling the licensors to satisfy themselves that the licensees have *bonâ fide* abandoned the use of the said inventions and improvements: PROVIDED ALSO, and it is hereby further

Power for licensees to determine licence by notice.

Proviso that if licence shall be determined by licensees, a minimum royalty shall be payable in respect of the four preceding quarters:

Proviso that in such case licensor may inspect works to ascertain that inventions have been abandoned.

Proviso for reduction of royalties if

(*k*) This power will be made exerciseable on default "in payment of the royalties hereinbefore reserved, or any of them, or any part thereof respectively."

IX. Licence to Use Several Patents and Improvements.

agreed and declared, that if the licensors shall at any time or times hereafter during the continuance of the said respective patents grant to any person or persons or body politic or corporate a licence or licenses to use the said inventions or any of them or any part or parts thereof respectively, within the United Kingdom and Ireland or the Isle of Man, for a purpose similar to the purpose for which the present licence is granted, at any royalty per ton and with a provision for payment of a minimum royalty, which shall respectively be less than the royalty per ton and minimum royalty respectively theretofore payable by the licensees, then and in every such case the licensors will grant unto the licensees a licence or licenses from time to time, as the case may be, to use the said inventions or any part or parts thereof for the use of which a licence or licenses shall have been so granted as aforesaid, at a royalty per ton with minimum royalty equal to the royalty which shall be payable by the person or persons or body politic or corporate to whom such licence or licenses shall have been so granted, but any licence to be so granted to the licensees as aforesaid shall be the same in all respects (except as to the amount of minimum and tonnage respectively reserved therein), and shall contain the same covenants and conditions to be performed and observed on their part as the licence hereby granted, so far as the different amount of royalty therein reserved will allow: Provided always that it shall not be obligatory on the licensors, to grant any new licence under this clause containing the provisions hereinbefore referred to with respect to the payment aforesaid of the annual minimum royalty unless the licensees shall at the time of the grant of such licence be making —— tons of —— at the least per week, or its equivalent; And that the licensors shall have the option and right of fixing a smaller amount of annual minimum royalty on the grant of such other licenses as aforesaid to manufacturers who shall not be making —— tons of —— at the least per week, a royalty, however, in all cases being reserved of not less than —— per ton of ——, and —— per ton of ——; And further that when any such licence shall have been granted to the licensees the royalty per ton theretofore payable by them shall cease to be payable except as to any part thereof which shall or may be then in arrear and unpaid; But nothing herein contained shall be

other licences at lower royalties shall be granted.

IX. Licence to Use Several Patents and Improvements.

construed as preventing the licensors, or any firm in which they or any of them shall be partners, or a partner from using the said inventions or improvements either without payment of any royalty, or upon such terms as the licensors or any firm as aforesaid shall think proper; And no such user as last aforesaid shall be deemed to be a licence within the terms or meaning of these presents: PROVIDED ALSO, and it is hereby agreed and declared by and between the said parties to these presents, that if in any one year when the said minimum royalty shall be paid, the amount thereof shall exceed the sum to which the tonnage royalty upon the —— made under these presents during such year would amount, then and in every such case the amount of excess so paid to make up the minimum royalty of such year shall be credited by the licensors against the next year's tonnage royalties, if the same shall be in excess of the amount of such minimum royalty, but so that at all times the royalty paid for each year to the licensors during the continuance of these presents shall not be less than the sum of £——, or the amount of any minimum royalty which may be fixed under any such new licence or licenses that may be granted to the licensees as aforesaid [*Power for licensors to disclaim, ut ante*, p. 803; *Covenants for title, &c., ut ante*, p. 803, *or* p. 811, *mutatis mutandis*; *Arbitration clause, ut ante*, p. 804, *or* p. 812].

Average clause.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

X. *ASSIGNMENT of a* PATENT *for an* INVENTION.

THIS INDENTURE (*l*), made the —— day of ——,

Parties. BETWEEN [*vendor*], of &c., of the one part; and [*purchaser*], of &c., of the other part.

Recital of patent; WHEREAS by a patent, dated the —— day of ——, the sole and exclusive licence, power, privilege, and authority, of making, using, and vending a certain [*describe invention*], for the term of fourteen years from the date thereof, has been granted to the said [*vendor*].

of contract for sale. AND WHEREAS the said [*vendor*] has agreed with the said [*purchaser*] for the absolute sale to him of the said invention and patent, and all future benefit and advantage thereof respectively, and of any other patent or patents which may be obtained for the said invention, free from incumbrances, at

Testatum. the price of £——. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of £—— by the said [*purchaser*] to the said [*vendor*], now paid (the receipt whereof is hereby acknowledged),

Vendor assigns patent. the said [*vendor*] hereby assigns, and as beneficial owner conveys unto the said [*purchaser*], his executors, administrators, and assigns, ALL THOSE the invention and patent hereinbefore mentioned, and the privileges by the said patent granted; And all future and other patents or privileges, either at home or abroad, or extension of the said patents, or of the privileges thereby granted, for or in respect of the said invention; And the exclusive use and benefit, exercise and enjoyment, of the said invention and privilege; And all rights, powers, authorities, privileges, advantages, profits, emoluments, and benefits, to the said patent, invention, and premises, or any of them, in anywise appertaining or belonging.

Habendum. TO HOLD, the said patent, invention, and premises, unto the said [*purchaser*], his executors, administrators, and assigns, henceforth for all the residue of the said term of fourteen years now unexpired, and for all other the term or terms which the said [*vendor*] may now have, or which may hereafter be granted or obtained therein, in as full, and beneficial a manner as the said [*vendor*] might have done if these

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(*l*) Stamp, *ad valorem*, as on a conveyance by way of sale (see *post*, tit. PURCHASE DEEDS) on the consideration money.

presents had not been made. AND the said [*vendor*] hereby covenants with the said [*purchaser*], that the said patent hereby assigned is good, valid, and effectual for the said invention, and is in nowise void or voidable.

IN WITNESS, &c.

X. Assignment of Patent.

Covenants by vendor that the patent is valid.

XI. *ASSIGNMENT of* PATENTS *communicated from* ABROAD, *by the* PATENTEE *to the* FOREIGN INVENTOR. VARIATIONS *where the* ASSIGNMENT *is to a* PURCHASER *by* DIRECTION *of the* FOREIGN INVENTOR. (*m*)

THIS INDENTURE (*n*), made the —— day of ——, 18—, BETWEEN [*patentee*], of &c., of the one part; and [*foreign inventor*] of ——, in the Empire of Germany of the other part: [*or* BETWEEN [*patentee*], of &c., of the first part; [*foreign inventor*], of &c., of the second part; and [*purchaser*], of &c., of the third part]: WHEREAS by the several patents

Parties.

(*m*) The variations are given by means of the words enclosed in leaded brackets.

Where a patent is granted to a person resident in the United Kingdom for an invention communicated from abroad, and as trustee for the foreign inventor, it is usual to endorse on the Certificate of Provisional Protection (as to which, see *ante*, p. 604) a memorandum in the following form:

I, the undersigned [*patentee*], do hereby declare that the patent within mentioned, was applied for by me, on behalf of, and as agent for [*foreign inventor*], of —— in the Empire of Germany: and I hereby undertake, when required by him, to assign or convey the same accordingly to the said [*foreign inventor*]; and, until such assignment or conveyance shall be made, to hold the same for his benefit.

Declaration of trust.

[*Signature and address of patentee*].

Dated the —— day of —— 18—.

As to inventions communicated from abroad, see *ante*, p. 601.

(*n*) Stamp, *ad valorem*, as a conveyance by way of sale.

XI. Assignment of Patent Communicated from Abroad.

set forth in the schedule, hereunto annexed, under the seal of the patent office, Her present Majesty granted unto the said [*patentee*], his executors, administrators, and assigns, special licence, full power, sole privilege, and authority, to make, use, exercise, and vend within the United Kingdom of Great Britain and Ireland, and the Isle of Man, the inventions mentioned in the same schedule, for the terms of fourteen years from the date of the said patents, respectively: AND WHEREAS, the said inventions were communicated to the said [*patentee*], from abroad, by the said [*foreign inventor*], and the said patents were granted to the said [*patentee*], as trustee and agent for the said [*foreign inventor*]: AND WHEREAS, the said [*foreign inventor*] has [agreed with the said [*purchaser*] for the absolute sale to him of the said several patents, and inventions, and the full benefit thereof, respectively, for the price of £——, and has] requested the said [*patentee*], to assign the said patents to him [*or* to the said [*purchaser*]] which he, the said [*patentee*] has agreed to do: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the premises [*or*, in consideration of the sum of £—— now paid by the said [*purchaser*] to the said [*foreign inventor*], the receipt whereof is hereby acknowledged], he the said [*patentee*] [at the request and by the direction of the said [*foreign inventor*] testified by his being a party to, and executing these presents], hereby assigns, and as trustee conveys unto the said [*foreign inventor*], [*or* unto the said [*purchaser*]], his executors, administrators, and assigns, ALL THOSE the —— several patents mentioned in the said schedule hereunto annexed, and the exclusive use, exercise, right, and enjoyment of the said inventions, for the terms for which the said patents were granted respectively. TO HOLD the said several patents and premises, hereby assigned unto the said [*foreign inventor*], [*or* unto the said [*purchaser*]], his executors, administrators, and assigns.

of agreement.

Testatum.

Assignment.

Habendum.

IN WITNESS, &c.

XII. *ASSIGNMENT of a* PATENT *and all future extensions thereof, in* CONSIDERATION *of a* GROSS SUM, *and further* PERCENTAGES ; *such* PERCENTAGES NOT *to be* PAYABLE *till* PURCHASER *has been* RECOUPED *his purchase-money and further outlay;* COVENANTS *by* PATENTEE *to communicate* IMPROVEMENTS.

THIS INDENTURE (*o*), made the —— day of ——, 18—, BETWEEN [*patentee*], of, &c., of the one part; and [*purchaser*], of, &c., of the other part: WHEREAS [*recite grant of patent, ante*, p. 824]: AND WHEREAS the said [*patentee*] has agreed with the said [*purchaser*] for the sale and assignment to him of the said patent, and the exclusive and absolute benefit thereof, for the sum of £——, and of other sums by way of percentage, or net profits of selling and working the said invention as hereinafter mentioned, and subject to the covenants on the part of the said [*purchaser*] hereinafter contained: AND WHEREAS upon the treaty for such sale, it was agreed that the said [*vendor*] should enter into the covenants on his part hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £——, now paid by the said [*purchaser*] to the said [*patentee*], the receipt whereof the said [*patentee*] hereby acknowledges, and of the payments by way of percentage on net profits hereinafter reserved, and of the covenants and agreements on the part of the said [*purchaser*] hereinafter contained, he the said [*patentee*] hereby assigns, and as beneficial owner, conveys unto the said [*purchaser*], his executors, administrators, and assigns; ALL that said invention of [*set out title*], and the said patent for the same, and the full and exclusive benefit thereof, and of all improvements, extensions, and renewals thereof, and all rights, powers, and privileges belonging to the premises; TO HOLD the same unto the said [*purchaser*], his executors, administrators, and assigns, for the residue now unexpired of the said

Parties. Recitals. *Testatum.* Assignment. *Habendum.*

(*o*) Stamp, *ad valorem*, as a conveyance by way of sale in respect of the gross sum, and also on the total amount of the periodical payments : see Stamp Act, 1870, sect. 72, and Schedule.

XII. **Assignment of Patent and Extensions, &c. (a Special Form).**

term of fourteen years, granted by the said patent, and any further term to be granted by any extension or renewal of the same; SUBJECT to the payment of the sums by way of percentage hereinafter mentioned and made payable, and to the performance and observance of the covenants on the part of the said [*purchaser*], and conditions hereinafter contained: AND the said [*patentee*] hereby covenants with the said [*purchaser*] that he the said [*purchaser*] will, without any further remuneration, royalties, or monies hereinafter agreed to be paid by the said [*purchaser*], communicate to the said [*purchaser*] all improvements which the said [*patentee*] may, during the continuance of the said patent, and which may be assigned to, or vested in the said [*purchaser*], under this present covenant, invent, discover, or make for, or in connection with the said invention, and also all improvements, whether patented or not, of which the said [*patentee*] shall become the owner, or of which the said [*patentee*] shall have the control, and will, so far as practicable, at the request and expense of the said [*purchaser*], render the same available for the exclusive use of the said [*purchaser*], and do every act, deed, and thing which may be necessary or expedient for obtaining and perfecting patents for all or any such improvements, and for assigning, or vesting the same to, or in the said [*purchaser*]; And the said [*purchaser*] hereby covenants with the said [*patentee*] that if, and so soon as the said [*purchaser*], his executors, administrators, or assigns, shall have received out of the net profits, to be calculated as hereinafter mentioned, arising from, or by means of the said invention, or such improvements as aforesaid (patents for which improvements shall have been assigned to, or become vested in the said [*purchaser*], his executors, administrators, or assigns), or from, or by means of any sales, or licenses, or dispositions of, or dealings with the same invention, or patented improvements, or otherwise, from, or by means of the using, exercising, vending, or making the said invention, or any such patented improvement as aforesaid, or the said patent, the sum of £——, he the said [*purchaser*], his executors, administrators, or assigns, shall pay to the said [*patentee*], his executors, administrators, or assigns, at the times, and in manner hereinafter mentioned, such a sum or sums of money as shall be equal to a percentage of £—— per cent. upon the net profits (to be calculated as hereinafter men-

Patentee to communicate improvements and take patents at cost of purchaser, and assign same to purchaser.

Covenant by purchaser to pay percentage on net profits calculated as hereinafter mentioned as soon as he has received £—— out of patent.

XII. Assignment of Patent and Extensions, &c. (a Special Form).

tioned), arising as aforesaid, from the time when the said [*purchaser*], his executors, administrators, or assigns, shall have received the aforesaid sum of £——, and thenceforth during the remainder of the period in which the said patent hereby assigned, or any such patent for improvements as aforesaid as shall be assigned to, or become vested in the said [*purchaser*], his executors, administrators, or assigns, shall continue in force: And further, that the said [*purchaser*], his executors, administrators, or assigns will, so soon as he or they shall have received from the net profits, arising as aforesaid, the sum of £——, thenceforth twice in every year, on the —— day of —— and the —— day of ——, or within fourteen days thereafter respectively, furnish to the said [*patentee*] an account showing the amount for the half year, in respect of which the account is furnished, of the net profits arising as aforesaid; and shall, within one calendar month after the date up to which such half yearly account is furnished, pay to the said [*patentee*], his executors, administrators, or assigns, the percentage by the said account appearing to be due; And it is hereby further agreed and declared between and by the said parties hereto as follows, that is to say:—

Purchaser to pay the percentage half yearly.

1. For the purpose of calculating the monies to be derived as aforesaid, there shall be deducted from the gross monies received from or by means of the said inventions, or such patented improvements as aforesaid, or any sales, or licenses, or other dispositions and dealings with the same, or otherwise, from, or by means of the using, exercising, mending, or working the invention, or patented improvements, or patent, which monies are hereinafter called the gross receipts, all costs, charges, losses, damages, and expenses whatsoever, which the said [*purchaser*], his executors, administrators, or assigns may have already paid or incurred, or may hereafter pay or incur, in or about the keeping in force the said patent, hereby assigned, or in or about the obtaining, or endeavouring to obtain, or the keeping in force any such patent for improvements as aforesaid, or the assigning the same to the said [*purchaser*], his executors, administrators, or assigns, or in or about the introducing to the public the said patent, inventions, and patented improvements, or any of them, or in or about any such sales, licenses, or other dispositions, or dealings as aforesaid, or in or about any legal,

How net profits to be calculated

XII. Assignment of Patent and Extensions, &c. (a Special Form).

or other proceedings, which may be taken for the purpose of restraining infringement of the said patents, or any of them, or for recovering damages for infringements, or which may be taken in respect of any sale, or proposed sale of the said patents, or any interest therein, or any licence, or proposed licence for working the said invention and patented improvements, or any of them, or any part thereof, or generally in any manner in or about the said patents, or any of them, or the using, exercising, vending, or working the said invention, or patented improvements, or any of them, or patents, all which costs, charges, losses, damages, and expenses are hereinafter referred to as patent expenses, together with interest at the rate of £—— per cent. per annum, upon such patent expenses respectively, from the time of the payment thereof, and the difference between the gross receipts for any half year and the patent expenses for the same half year shall be the net profits arising as aforesaid, upon which the percentage aforesaid is to be paid.

Purchaser to keep books of account.

2. Proper books of account shall be kept by the said [*purchaser*], his executors, administrators, and assigns, in which true, plain, and perfect entries shall be made of all the payments, expenses, and gross receipts aforesaid, and such books of account shall, at all reasonable times, be open to the inspection of the said [*patentee*], his executors, administrators, or assigns, or any agent duly appointed by him or them in writing.

Purchaser not to be obliged to take out patents for improvements, or to maintain and defend patents, but to be absolute owner of patents without interference by patentee.

3. Nothing herein contained shall be construed as obliging the said [*purchaser*], his executors, administrators, or assigns to obtain, or endeavour to obtain, any patent for any such improvements as aforesaid, or to accept any assignment of any patent for such improvements, or to pay the stamp duty upon, or to defend, or maintain the said patent hereby assigned, or any such patent for improvements as aforesaid, which may be assigned to, or become vested in him, or them, in performance of the covenants in that behalf hereinbefore contained, or to take any steps for restraining infringements of the same patents, or any of them, or recovering damages for any infringement, or to make any sale or sales of the said patents, or any interest therein, or to grant any licence, or licenses for the use of the said invention, or any such patented improvements as aforesaid, or any part thereof respectively, or in any manner to use, exercise, vend, or work the said

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invention, improvements or patents, or any of them; it being hereby expressly agreed, and declared that the said [*purchaser*], his executors, administrators, or assigns, is and are and shall be the absolute owners of the said patent hereby assigned, and of any patent or patents for improvements which may be assigned to or vested in him or them as aforesaid, or which he or they may, under the covenants aforesaid, require to be assigned to him or them; and that the said [*purchaser*], his executors, administrators, or assigns, shall not, in regard to the said patents, or any of them, be subject to any control or interference whatsoever of the said [*patentee*], his executors, administrators, or assigns.

Neither party to assign without consent of other.

4. During the continuance of the said patent hereby assigned, and during the continuance of any patent or patents for improvements which may be assigned to or become vested in the said [*purchaser*], his executors, administrators, or assigns as aforesaid, the said [*patentee*], his executors, administrators, or assigns, shall not sell or dispose of the percentage payable to him or them as aforesaid without the consent in writing of the said [*purchaser*], his executors, administrators, or assigns; nor shall the said [*purchaser*], his executors, administrators, or assigns sell, or dispose of the said patents, or any of them, without the consent in writing of the said [*patentee*], his executors, administrators, or assigns.

Agreement not to create a partnership between the parties.

5. Nothing herein contained shall be considered as constituting a partnership between the said parties hereto.

Implied covenant for title not to be construed as warranty of validity of patent.

6. Nothing herein contained shall be construed as a warranty by the said [*patentee*], of the novelty or utility of the said invention, or of the validity of the said patent hereby assigned.

In witness, &c.

XIII. *ASSIGNMENT of one undivided third* SHARE *in two* PATENTS, COVENANT *by* PATENTEE *to* ASSIGN *to Purchaser a third* SHARE *in* FUTURE PATENTS.

THIS INDENTURE (*p*), made the —— day of ——, 18—, BETWEEN [*patentee*], of &c., of the one part; and [C. D.], of &c., of the other part: WHEREAS [*here recite grant of patent*]; WHEREAS [*recital of grant of further patent*]: AND WHEREAS the said [*patentee*] has agreed with the said [*purchaser*] for the absolute sale to him of one equal third part or share of and in the said recited patents and the right and interest of and in the same respectively for the sum of £——. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— to the said [*patentee*], now paid by the said [*purchaser*], the receipt of which said sum of £——, the said [*patentee*] hereby acknowledges, the said [*patentee*] hereby assigns, and as beneficial owner conveys unto the said [*purchaser*], his executors, administrators, and assigns: ALL THAT one equal undivided third part or share of and in all those the said two several patents, and the exclusive exercise, use, and enjoyment of the said inventions therein respectively mentioned, and all and singular the liberties, privileges, profits, emoluments, and advantages, whatsoever appertaining or belonging thereunto, or in anywise to be had or made therefrom. To HOLD the said one equal undivided part or share of and in the said two several patents and all other the premises hereinbefore expressed to be hereby assigned unto the said [C. D.], his executors, administrators, and assigns, from henceforth during all the respective residues, now to come or unexpired, of the said terms of fourteen years, and fourteen years in and by the said several patents respectively granted, for his and their own use and benefit: PROVIDED ALWAYS, and it is hereby agreed and declared that if the said inventions or improvements hereinbefore recited are not truly the inventions or improvements of the said [*patentee*], or if the said several patents hereinbefore recited, or either of them, should at any time hereafter be adjudged to be null and void on any account

Recitals: of original patent; of new patent; of agreement for sale.

Assignment of one-third of patents.

Habendum: for the terms for which the patents are granted.

That if patent be made void the vendor shall repay the money.

(*p*) Stamp, *ad valorem*, as a conveyance by way of sale.

XIII. Assignment of Share of Patent.

whatsoever, or in case the said [A. B.], his executors, administrators, and assigns shall not well and truly observe and perform all and every the statutory covenants on his part, implied by the conveyance of the said patents, hereinbefore contained, then and in any of the said cases, the said [*patentee*] hereby covenants with the said [*purchaser*] immediately, to repay to the said [A. B.], or his executors, administrators, or assigns, the sum of £——, subject nevertheless and without prejudice to such third part of the produce and profits of the said invention or improvements as aforesaid, as he the said [C. D.], his executors, administrators, or assigns shall have then made or received, or shall then be entitled to receive: And, for the consideration aforesaid, the said [*patentee*] hereby covenants with the said [*purchaser*] that in case at any time or times hereafter, during or after the expiration of the said patents or either of them, the said invention or any alteration or improvement therein should be secured to the said [*patentee*], his executors or administrators, by any other patent or patents for some future term or terms, or time beyond the said two several terms of fourteen years, and fourteen years, or either of them, then and in every such case the said [*patentee*], his executors or administrators will at the request and expense of the said [*purchaser*], his executors, administrators, or assigns, make such assignment or assignments unto the said [*purchaser*], his executors, administrators, or assigns, of one equal third part or share of, and in all such patents so to be granted as aforesaid, and of and in the exclusive exercise and enjoyment of the said invention or improvement thereby to be secured, for and during all such term or terms, and time as in, and by such patents respectively, shall be granted and limited, as by the said [*purchaser*], his executors, administrators, or assigns shall be reasonably required.

That if patent should be renewed the vendor will convey further interest in third to purchaser.

In witness, &c.

XIV. *AGREEMENT between an* AUTHOR *and a* PUBLISHER *for the* WRITING AND PUBLISHING OF A BOOK; *the* COPYRIGHT *to* BELONG TO THE PUBLISHER, *and the* AUTHOR *to have the* RIGHT *of* EDITING FUTURE EDITIONS. *Special Provision for* DEATH *of* AUTHOR *during the printing of any Edition, and for* INCREASE *of the* NUMBER *of any Edition.*

Parties.

AN AGREEMENT (*p*), made the —— day of ——, 18—, BETWEEN [*author*], of, &c., and [*publisher*], of, &c., bookseller and publisher, whereby it is agreed and declared between, and by the parties hereto, as follows:—

Agreement by author to write book.

1. THE said [*author*] agrees to write, prepare, and superintend through the press, a complete and original treatise on ——, according to the present state of knowledge respecting the same, and with all usual and necessary tables and indexes (*q*).

Publisher to print and pay for the copyright £——.

2. THE said [*publisher*] agrees to procure such work to be printed (*r*) at his own expense, and to pay to the said [*author*], his executors, administrators, or assigns, for the immediate purchase of the absolute copyright thereof, the sum of £——; £—— thereof to be paid in cash on the day of the publication of the said work, and the remaining £—— to be paid by the bill or promissory note of the said [*publisher*], to be given to the said [*author*], his executors, administrators, or assigns, on such day of publication, and to be payable at the end of six months therefrom; and the further or additional sum of £—— to be paid to the said [*author*], if the sale of such work shall amount to six hundred copies within the period of four years from such day of publication.

Further sum on sale of 600 copies within four years.

Option to author to edit future editions.

3. IN case the first or any future edition of the said

(*p*) Stamp, 6*d*.

To prepare drawings for engravings.

(*q*) If there are to be engravings, and it is the agreement, add, "And, for the considerations hereinafter mentioned, to prepare or procure in a proper state for the use of the engraver all such drawings as shall be necessary for the illustration of the said work."

(*r*) if there are to be engravings, say,
"and engraved"

XIV. Agreement to Write a Book.

work shall be out of print for the space of one year, or a new or further edition of the said work shall at any time be required, the said [*author*] shall be at liberty to prepare for and superintend through the press such new edition, consisting of the same number of copies as the first edition of the said work, on the terms above mentioned (except that the aforesaid additional sum of £—— shall only be payable for the second or any subsequent edition of the said work, in case the whole of the next preceding edition shall have been sold within the space of six years from the day of the publication thereof), adapting such new edition to the then state of knowledge respecting the subject of the said work: PROVIDED, that, in case the said [*author*] shall not so prepare a new edition of the said work, and send the same to press within —— calendar months after being requested thereto by the said [*publisher*], his executors, administrators, or assigns, and shall not complete and carry such new edition through the press within the further space of —— calendar months; or in case of the death of the said [*author*], then the said [*publisher*], his executors, administrators, and assigns, shall be entitled to publish an edition, and all future editions, of the said work, in such manner, and under such editorship, as he or they shall think fit (*s*), and shall then pay to the said [*author*], his executors, administrators, or assigns, for each such edition which shall not be so edited by the said [*author*] the sum of £—— only.

Proviso as to additional remuneration on quick sale.

If author neglect to prepare edition, publisher may procure any other person to do it.

Consideration for editions not prepared by author.

4. IN case the said [*author*] shall die during the progress through the press of the second or any future edition of the said work to be prepared by him as aforesaid, the said [*publisher*], his executors, administrators, or assigns, shall pay to the executors or administrators of the said [*author*], within six months from the time of such decease, a part of the remuneration aforesaid, bearing the same proportion

Proviso for death of author while any edition is in the press.

(*s*) When the work is not of a very permanent character, it may properly be stipulated that the publisher shall make no payment to the author unless he performs the task of editing the work. In such case omit the words from which this note is referred to, and say,—

"Without paying any sum of money or compensation to the said [*author*], his executors, administrators, or assigns, in respect thereof."

XIV. Agreement to Write a Book.

thereto as the number of sheets of such new edition that shall have been returned for press by the said [*author*], shall bear to the total number of sheets of the next preceding edition (*t*).

Proviso for death of author before the completion of the first edition.

(*t*) No provision is made for the event of the author dying before the completion of the first edition of his work, because, in most cases, an unfinished work would be of little value. Under particular circumstances, however, it will be proper to make some provision to meet that event. Some such clause as the following will then be added :—

"And in case the said [*author*] shall die after ten sheets at the least of the first edition of the said work shall have been returned for press, and before the whole of the said work shall have been printed, then the said [*publisher*], his executors, administrators, or assigns, shall pay to the executors or administrators of the said [*author*] such sum of money as two arbitrators, one to be appointed by each of the said parties, or their umpire, shall determine to be a fair compensation or sum to be paid for so much of the said work as shall be so printed, and for the copy or manuscript thereof which the said [*author*] shall leave behind him, and upon such payment the absolute copyright of such unfinished work shall belong and shall be assigned to the said [*publisher*], his executors, administrators, and assigns, free from all liability to make any payment for any future edition or editions of the same : PROVIDED ALWAYS, that in case the said [*author*] shall die without finishing the said work as aforesaid, and the said [*publisher*], his executors, administrators, or assigns, shall, by writing under his or their hand or hands, signify to the executors or administrators of the said [*author*], within two calendar months after the decease of the said [*author*], his or their intention to relinquish all claim to the said work, and shall by such writing demand to be repaid the expenses which he or they shall have incurred in and about the printing, preparing, warehousing, insuring, and advertising the same, then upon payment by the executors or administrators of the said [*author*] to the said [*publisher*], his executors, administrators, or assigns, of the amount of such expenses with interest after the rate of —— per cent. per annum, and commission after the rate of —— per cent., within three calendar months after such notice and demand as aforesaid, the copyright in such work, and the printed copies of the

Proviso that publisher may relinquish unfinished work.

XIV. Agreement to Write a Book.

5. In case the first edition of the said work shall not extend to eight hundred pages of the size of and printed uniformly with the pages of the —— edition of ——, bearing date 18—, the remuneration hereby agreed to be paid to the said [*author*], his executors, administrators, or assigns, for such first and for each subsequent edition shall be reduced in proportion to the deficiency of the number of pages of such first edition, whether any subsequent edition shall extend to or exceed such number of pages or not.

Proviso as to bulk of work.

6. If the said [*publisher*], his executors, administrators, or assigns, shall print more than two thousand copies of any one edition of the said work in respect of which the said [*author*], his executors, administrators, or assigns, shall be entitled to any payment, then every sum of money or remuneration to which the said [*author*], his executors, administrators, or assigns, shall be entitled to under this agreement in respect of such edition, shall be increased in proportion to the increase in the number of copies which shall be so printed of such edition; But if less than two thousand copies of any edition shall be printed, such sum or sums of money or remuneration shall not be diminished unless the said [*author*], his executors, administrators, or assigns, shall agree thereto.

Proviso as to number of copies to be printed of each edition.

7. In case after the commencement of the printing of the first edition of the said work, the same shall, by reason of any default or neglect on the part of the said [*author*],

Proviso in case the author shall delay work while in the press (*u*).

sheets thereof, and all benefit arising from such expenses or expenditure, shall belong to the executors or administrators of the said [*author*]; but if after such notice and demand as aforesaid, the executors or administrators of the said [*author*] shall, for the space of three calendar months, neglect to make such payment, then the said [*publisher*], his executors, administrators, or assigns, shall be entitled to the absolute copyright of the said work and to the printed copies and benefit aforesaid, and also to all the manuscript or copy thereof which the said [*author*] shall have left behind him, without making any payment whatever to the executors or administrators of the said [*author*], for or in respect of the same."

(*u*) Or, if such be the intention of the parties, a clause to the

XIV. Agreement to Write a Book.

remain in the press during his life for a longer period than one year, then the said [*publisher*], his executors, administrators, or assigns, shall be at liberty to put an end to this agreement by notice under his or their hand or hands to the said [*author*], or in case of his death, his executors or administrators, within two calendar months after his decease, unless the whole of the said work shall have been previously to such notice returned for press by the said [*author*]; And within three calendar months from the time of the delivering of such notice all the expenses incurred by the said [*publisher*], his executors, administrators, or assigns, in and about the printing, preparing, warehousing, insuring, and advertising, of any part of the said work, together with interest after the rate of —— per centum per annum, and commission after the rate of —— per centum, shall be paid by the said [*author*], his executors, administrators, or assigns to the said [*publisher*], his executors, administrators, or assigns, and on such payment the printed and unprinted paper, and all benefits to be derived from such expenditure by the said [*publisher*], his executors or administrators, shall belong to the said [*author*], his executors, administrators, and assigns.

Six copies to be delivered to author.

8. And it is hereby lastly agreed, that the said [*publisher*], his executors, administrators, or assigns, shall deliver to the said [*author*], his executors, administrators, or assigns, six

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following effect may be here inserted instead of clause 7:—

Author may delay going to press.

7A. Provided always, and it is hereby expressly agreed and declared by the said parties hereto, that the said [*author*] shall not be bound or obliged to commence the printing of the said work, or to furnish manuscript or copy thereof to the printer, or to the said [*publisher*], or to any other person, unless or until he the said [*author*] shall think fit so to do;

Author not to engage in any similar publication.

and he the said [*author*], in consideration of such licence, hereby agrees not to engage directly or indirectly, either alone or together with any other person or persons, to prepare or edit any work on the same subject or plan as the work aforesaid, to be published by or on behalf of himself the said [*author*], or by or on behalf of any other person or persons whomsoever, other than the said [*publisher*], his executors, administrators, or assigns.

perfect copies, in boards, of each edition of the said work which shall be wholly or as to the greater part thereof edited and superintended through the press by the said [*author*] as aforesaid. XIV. Agreement to Write a Book.

As witness, &c.

XV. *AGREEMENT for the* Writing *and* Publication *of a* Book *on the terms of* Sharing *the* Profits. *Proviso for* selling the copies *on hand at a* reduced Price, *if the work shall not pay its expenses within a certain time.*

AN AGREEMENT (*x*), made the —— day of ——, Between [*author*], of, &c., of the one part, and [*publisher*], of, &c., of the other part, Whereby, &c.:— Parties.

1. The said [*author*] agrees to prepare and superintend through the press a work to be entitled "——," and the said [*publisher*] agrees to procure such work to be printed and published at his own expense, including all the charges for the paper, printing, insurance, warehousing, and advertising of the same work. Agreement for writing and publishing.

2. The said [*publisher*] shall account for all the copies of the said work that shall be sold at the trade price; and after deducting the expenses aforesaid, with commission thereupon at the rate of 10*l.* per centum (which commission is to be in lieu of all interest thereon), the proceeds of such sale (to be accounted for as aforesaid) shall be divided into two equal moieties, one moiety to be paid to the said [*author*], his executors, administrators, or assigns, and one moiety to be retained by the said [*publisher*], his executors, administrators, or assigns. Profits to be shared.

3. The said [*publisher*], his executors, administrators, or assigns, shall render to the said [*author*], his executors, administrators, or assigns, an annual account of the sale of Publisher to account and permit inspection of stock.

(*x*) Stamp, 6*d.*

XV. Agreement. Author and Publisher to Share Profits.

the said work, and shall permit the said [*author*], his executors, administrators, or assigns, to inspect the stock thereof on hand, at any reasonable time after the delivery of such account.

Proviso as to future editions.

4. The said [*publisher*], his executors, administrators, or assigns, shall have the option of printing and publishing any future edition or editions of the said work upon the terms and conditions aforesaid, provided that he or they shall notify such option by writing to the said [*author*], his executors, administrators, or assigns, within eight calendar months after the last copy of the then last edition shall have been sold. But in case the said [*author*] shall have departed this life or shall not send such new edition to press within three calendar months after he shall receive such notice as aforesaid, or shall not return the last sheet thereof for press within the further period of six months, then the said [*publisher*], his executors, administrators, or assigns, shall be at liberty to procure any other person or persons to prepare or complete such new edition, and shall be allowed, in the account aforesaid, such reasonable sum as he shall pay him or them for doing the same. And in case the said [*publisher*] shall not so declare such option as aforesaid, then, after the expiration of the time aforesaid, the copyright of the said work shall become the absolute, unqualified property of the said [*author*], his executors, administrators, or assigns.

If expenses are not realised within five years, publisher may sell at a reduced price.

5. In case the proceeds arising from the sale of any edition of the said work, during the first five years from the day of the publication thereof, shall not be sufficient to pay all the expenses aforesaid, then the said [*publisher*], his executors, administrators, or assigns, shall be at liberty (but shall not be compellable) to sell the remaining copies of such edition at such price or prices as he or they shall from time to time think fit, and shall account for them at such price or prices only as they shall actually be sold for.

As witness, &c.

XVI. *AGREEMENT for the compiling of* A DICTIONARY, *the* CONSIDERATION *to be* PAID IN ADVANCE *by* INSTALMENTS. AUTHOR *and a* SURETY *agree to* REPAY ADVANCES *if the Work is not completed according to the Agreement. Proviso for future Editions.*

ARTICLES OF AGREEMENT (*y*), made the —— day of ——, BETWEEN [*author*], of, &c., of the first part; [*surety*], of, &c., of the second part; and [*publisher*], of, &c., of the third part: WHEREBY, &c.:— Parties.

1. THE said [*author*] agrees to prepare and superintend through the press a complete and perfect alphabetical dictionary of (*describe accurately the subject of the work*). Agreement to compile dictionary.

2. THE copyright of the said work shall belong to the said [*publisher*], his executors, administrators, and assigns, who shall print the same with all reasonable despatch, and shall publish the same at his or their own expense, and shall pay to the said [*author*] the sum of £——, by eight equal and consecutive quarterly payments of £—— each, on the usual quarterly days, the first payment being made on the —— day of —— next; and shall, on the day of the publication of the said work, pay to the said [*author*] the further sum of £——, by a bill or bills, payable within three months from such day of publication. Copyright to belong to publisher. Consideration to be by instalments.

3. THE first edition of the said work shall not exceed —— copies; and that in case the said [*author*] shall, upon the written request of the said [*publisher*], his executors, administrators, and assigns, agree to prepare any future edition of the said work, and shall prepare and superintend the same through the press, and shall return the last sheet thereof for press within fifteen calendar months from the date of such request, the said [*publisher*], his executors, administrators, or assigns, shall, on the day of the publication thereof, pay to the said [*author*], his executors, administrators, or assigns, the sum of £——, by two bills of £—— each, payable respectively within four months and nine months from such day of publication. Number of copies. Proviso as to future editions.

4. IF the said [*author*] shall refuse or be unable to prepare Proviso in

(*y*) Stamp, 6*d.*

XVI. Agreement for Dictionary. Payment in Advance.

any such future edition, or shall fail to return the last sheet thereof for press within the time aforesaid, then, and not otherwise, the said [*publisher*], his executors, administrators, and assigns, shall be at liberty to procure any other person to edit such edition and all future editions, and shall only be liable to pay to the said [*author*], his executors, administrators, or assigns, the value of so much of such future edition as the said [*author*] shall have actually prepared, and shall deliver to the said [*publisher*], his executors, administrators, or assigns, such value to be determined by arbitration in the usual manner.

case author do not complete any edition within a stipulated time.

Proviso in case author shall not complete first edition.

5. In case the said [*author*], by reason of his prior decease, or any act or default of him the said [*author*], shall not complete the said work, and return the last sheet thereof for press on or before the first day of ——, 18—, the agreement hereinbefore contained shall be void, and the said [*author*], his executors, administrators, or assigns, upon delivering all the manuscript of the said work which shall be then prepared unto the said [*publisher*], his executors, administrators, or assigns, shall be entitled to retain or receive from the said [*publisher*], his executors, administrators, or assigns, such sum only as two arbitrators, one to be nominated by each party, or their umpire, shall award as the fair value of such manuscript to a publisher; Upon retention or payment of which sum the copyright of such manuscript shall belong to the said [*publisher*], his executors, administrators, or assigns.

Compensation for manuscript completed.

Agreement to repay consideration in certain cases.

6. And the said [*author*], and the said [*surety*], as his surety respectively, jointly and severally agree with the said [*publisher*] that in case the said [*author*] shall not complete the said work, and return the last sheet thereof for press on or before the first day of ——, 18—, they the said [*author and surety*], or one of them, or the heirs, executors, or administrators of them, or one of them, will upon the first day of ——, 18—, or within three calendar months from the decease of the said [*author*], whichever shall first happen, repay unto the said [*publisher*], his executors, administrators, and assigns, all such sums of money (not exceeding £—— in the whole) as the said [*publisher*] shall have paid unto the said [*author*] under this agreement, and (unless such non-completion shall be caused by such decease) with interest at the rate of —— per cent. per annum, deducting therefrom such sum

as the said [*author*], his executors, administrators, or assigns shall be so found entitled to as aforesaid for the value of the manuscript which shall be delivered unto the said [*publisher*], his executors, administrators, or assigns.

XVI. Agreement for Dictionary. Payment in Advance.

As witness, &c.

XVII. *AGREEMENT between an* Author *and* Publisher *for the publishing of a* new *and* enlarged Edition *of an existing* Book.

AN AGREEMENT (*z*), made the —— day of ——, 18—, Between [*editor*], of, &c., of the one part, and [*publisher*], of, &c., of the other part; Whereby each of the parties hereto, so far as the stipulations and conditions herein contained are to be performed or observed on his part, agrees with the other of them as follows, that is to say:—

Parties.

Agreement.

1. The said [*editor*], for the considerations hereinafter mentioned, shall peruse, correct, alter, and enlarge by the addition of fresh manuscript matter, and edit the work called and known as "——," for the purpose of preparing and bringing out a new, being the second, edition of the same, and to prepare and append thereto a full and complete index.

Editor to correct and enlarge work.

2. The said new edition shall be printed on pages of the same size as the last edition of the said work, and in similar type, so as to contain a similar amount of matter on each page.

Edition to be similar in type as the last.

3. The fresh manuscript matter to be added by the said [*editor*] shall be of an amount sufficient to enlarge the work by not less than —— such pages as aforesaid.

As to addition of fresh MS. matter.

4. The said [*editor*] shall commence to furnish matter for the said new edition to the said [*publisher*], or to such printer as he shall direct, on the —— day of —— next, and shall thereafter continuously furnish such matter with all convenient speed, and so that the furnishing thereof (except

Supply of copy.

(*z*) Stamp, 6*d*.

XVII. Agreement for Publishing Enlarged Edition.

as regards the index) shall be completed before the —— day of ——, 18—.

Editor to superintend printing, &c.

5. The said [*editor*] shall superintend the printing, and correct the proofs in the usual manner, as fast as they shall be furnished to him, and shall complete the index as soon as may be after the whole signatures of the text shall have been delivered to him for that purpose.

Publisher to bear costs of publishing.

6. The said [*publisher*] shall, at his own cost, print the said new edition as the matter shall be furnished, and publish the same when completed; and shall furnish to the said [*editor*] a copy thereof by signatures, as the same shall be worked off, for the purpose of preparing the said index.

As to editor's remuneration.

7. The said [*publisher*] shall pay to the said [*editor*], for preparing and editing the said new and enlarged edition, the sum of £——, by the instalments and in manner following, that is to say: the sum of £—— part thereof in cash so soon as the said edition shall be printed and ready for publication; the sum of £——, other part thereof, by an approved bill, payable four months after date; and the sum of £——, the residue thereof, by an approved bill, payable eight months after date; both such bills to be dated on the date when the said edition shall be ready for publication, and to bear interest at the rate of £—— per cent. from that date: And the said [*publisher*] shall also deliver to the said [*editor*] —— copies of the said edition as soon as conveniently may be after publication thereof.

As witness, &c.

XVIII. *AGREEMENT for the* EDITING *of an existing* LAW BOOK *in* THREE VOLUMES *by* THREE SEVERAL EDITORS, *one of them taking each volume; with provision for future Editions.*

AN AGREEMENT (*a*), made the —— day of ——, BETWEEN [*editors*], of, &c., and [*publisher*], of, &c.: WHEREBY it is agreed and declared between and by the parties hereto as follows:— Parties.

THE said [*first editor*] agrees to prepare for and superintend through the press a new edition of the first volume of ——, stating (by means of notes) the law as to the subjects therein treated of as it shall exist at the period at which such edition shall go to press, and furnishing proper table of contents, and an index thereto; And the said [*publisher*] agrees to procure such edition to be printed at his own costs, and to pay to the said [*first editor*] for the purchase of the absolute copyright thereof, and of the matter which the editor shall contribute thereto, the sum of £—— in manner following (that is to say), £—— to be paid in cash on the day on which the whole three volumes of the said work —— shall be ready for publication, and the remaining £—— by a bill or promissory note, payable at the expiration of three months from such day: AND it is further agreed, that in case the said [*publisher*], his executors, administrators, or assigns, shall desire to republish the matter furnished by the said [*first editor*], to any previous edition of the said volume, or any part of it, the said [*first editor*] shall be at liberty to prepare and superintend through the press the edition or work intended to contain such matter upon the terms above mentioned, bringing the law in such work down to the period at which the same shall go to press: PROVIDED, that in case the said [*first editor*] shall not so prepare such work or edition, and send the same to press within six calendar months after being thereto requested by the said [*publisher*], his executors, administrators, or assigns; or shall not complete and carry such work or edition through the press within the further space of four calendar months (unless delayed by the said [*publisher*], his executors, administrators, or as-

Agreement as to first volume.

Consideration

Proviso as to future editions

(*a*) Stamp, 6*d*.

XVIII. **Agreement by Several for Editing a Book.**

signs), then the said [*publisher*], his executors, administrators, or assigns, shall be at liberty to publish such matter in such manner and under such editorship and superintendence as the said [*publisher*], his executors, administrators, or assigns shall think fit, without paying any sum of money or remuneration to the said [*first editor*], his executors, administrators, or assigns in respect thereof: And in case the said [*publisher*], his executors, administrators, or assigns, shall print more than two thousand copies of any edition or work in respect of which the said [*first editor*] shall be entitled to remuneration under this agreement, the said [*first editor*] shall receive a further sum proportionate to the excess of such number of copies above two thousand: And in case the said [*first editor*] shall die during the progress through the press of any edition of the said volume prepared by him as aforesaid, the said [*publisher*], his executors, administrators, or assigns, shall pay to the executors or administrators of the said [*first editor*], within six calendar months from the day of his decease, a part of the remuneration aforesaid, bearing the same proportion thereto as the number of sheets of such edition returned for press by the said [*first editor*] shall bear to the number of sheets in the next preceding edition prepared by him; And in case the said [*first editor*] shall depart this life during the progress of the first edition of the said work to be commenced by him, then his executors or administrators shall be entitled to receive as aforesaid such sum as two arbitrators, one to be appointed on either side, within six calendar months after the decease of the said [*editor*], or their umpire to be chosen before they shall enter upon the business of reference, or, in case either party shall not name an arbitrator on his part during such six calendar months, and within one week after being requested thereto by the other party (whichever shall be the later period), then as one arbitrator, to be appointed by such other party alone within one calendar month after the expiration of such later period, shall award and determine: And for every edition, volume, or work completed by the said [*editor*], the said [*publisher*], his executors, administrators, or assigns, shall deliver to the said [*editor*], his executors, administrators, or assigns, on the day of publication and free of charge, four complete copies of the work of which such volume shall form a part; And the said [*other editors*]

If more than a fixed number of copies be printed, editor's remuneration to be increased in proportion.

Proviso for death of editor while any edition is in the press.

Delivery of copies.

Similar.

respectively and the said [*publisher*] mutually agree concerning the editing of the second and third volumes respectively of the said work by the said [*second editor*] and [*third editor*] respectively, and the publishing thereof upon the terms herein agreed upon concerning the editing of the first volume of the said work by the said [*first editor*], and the publishing thereof.

XVIII. **Agreement by Several for Editing a Book.**

Mutual agreements by and with the other editors.

As witness, &c.

XIX. *LICENCE to* print, publish, *and* sell one Edition *of a* Book.

AN AGREEMENT (*b*), made the —— day of ——, 18—, Between [*author*], of, &c., of the one part, and [*publisher*], of, &c., of the other part: Whereas the said [*author*] has written and prepared a certain book called "——:" NOW THESE PRESENTS WITNESS, that it is hereby agreed and declared, between and by the parties hereto, as follows, that is to say:—

Parties.

Testatum.

1. For the consideration hereinafter mentioned, the said [*author*] hereby grants unto the said [*publisher*] full, sole, and exclusive licence and authority to print, publish, and sell, one edition of —— copies of the said book, the said [*author*] reserving to himself the general copyright in the said book.

Licence to print, &c., one edition

2. The said author will, within —— weeks from the date of these presents, furnish to such printer as the said publisher shall direct, a fair copy of the book, and will superintend the printing, and correct the proofs in the usual manner; and that he will duly register his title under the Literary Copyright Act, 1842, as the proprietor of the copyright in the said book.

Supply of copy, &c.

3. The said [*author*] will not himself print, publish, or sell, or authorise or permit any other person to print, pub-

Author not to print, &c., copies for six years.

(*b*) Stamp, 6*d.*

XIX. **Licence to Print Edition.**

lish, or sell, any other copies of the said book for the period of —— years from the date of these presents, or until the whole of the said edition of —— copies shall have been sooner disposed of by the said publisher.

Publisher to pay royalty on copies sold.

4. The said [*publisher*], in consideration of the aforesaid licence and agreements on the part of the said [*author*], will pay to the said [*author*] the sum of —— for each and every copy of the said edition, such sums to be payable half-yearly, up to and within one calendar month after delivery to the said author, of every such account as is hereinafter mentioned, the first of such half-yearly payments to be made within one calendar month after the delivery of the first of such accounts.

As to delivery of half-yearly accounts.

5. The said [*publisher*] will keep and deliver to the said [*author*] half-yearly a true and full account of all sales of copies of the said edition which shall have been effected from time to time during the preceding half-year until the whole of the said edition shall have been disposed of, the first of such half-yearly accounts to be rendered at the expiration of six calendar months from the date of the publication of the said edition.

Delivery of copies of work to author.

6. The said [*publisher*] will, as soon as conveniently may be after the first publication of the said edition, give to the said [*author*] —— copies thereof, well bound in ——, and free of charge.

Limitation of number of copies of edition.

7. The said [*publisher*] will not, without the consent in writing of the said [*author*], his executors, administrators, or assigns, print, publish, or sell, more than —— copies of the said book, nor assign or part with the benefit of this licence and agreement.

Limitation of licence to one edition.

8. Nothing herein contained shall be taken to extend this licence beyond one edition of the number of copies hereinbefore mentioned.

As witness, &c.

XX. *AGREEMENT between an* AUTHOR *and* PUBLISHER *for the* SALE *of a* BOOK *on* COMMISSION.

AN AGREEMENT (*c*), made the —— day of ——, 18—, BETWEEN [*author*], of, &c., of the one part, and [*publisher*], of, &c., of the other part: WHEREAS the said [*author*] has in preparation a book to be called "——," and has arranged with the said [*publisher*] that he the said [*publisher*] shall have the sole right of publishing and selling the first edition of the said book: NOW THESE PRESENTS WITNESS, that it is hereby agreed and declared, between and by the parties hereto as follows, that is to say:—

Parties.

Recital.

Testatum.

1. The said [*publisher*] shall have the full, sole, and exclusive right of printing, publishing, and selling, the first edition of the said book, such edition to consist of —— copies, at a commission after the rate of £—— per cent. on the amount which shall from time to time be received by him by the sale of copies of the said book.

Agreement that publisher shall have sole right of selling edition.

2. The said [*author*] will, on or before the —— day of —— next, furnish to the said [*publisher*] an instalment or portion of the manuscript of the said book, and will continue to furnish him with further instalments thereof until the whole book shall be completed; and will superintend the printing and correct the proofs in the usual manner.

As to supply of copy.

3. The said [*publisher*] will print and publish the said edition at his own cost, indemnifying the said [*author*] from all costs and expenses of and incident to the publication or sale thereof.

Publisher to bear costs of publication.

4. The said [*publisher*] will keep and deliver to the said author, on the —— day of —— in every year until the said edition shall have been disposed of, a true and full account of all sales of copies of the said edition which shall have been effected during the preceding year, the first of such accounts to be delivered at the expiration of twelve calendar months from the date of the publication of the said edition.

Publisher to keep and deliver yearly accounts of sales.

5. The proceeds of all sales of copies which shall from time to time be effected by the said [*publisher*] shall be applied by him in the first place in or towards the payment or reimbursement to the said [*publisher*] of all costs and ex-

Application of proceeds of sales.

(*c*) Stamp, 6*d.*

XX. Agreement for Sale of Book on Commission.

penses of providing paper, for printing, binding, advertising, warehousing, and insurance of the said book, and all other costs of and incident to the publication and sale thereof; and in the next place, in or towards payment to the said [*publisher*] of a commission after the rate of £—— per cent., and also of the usual trade allowance of —— per copy, in respect of all sales which shall from time to time be effected by him, as shown by the said yearly accounts respectively; and the surplus (if any) of the said proceeds shall, from time to time, within one calendar month after the delivery of every such account, be paid by the said [*publisher*] to the said [*author*] for his own benefit absolutely.

As witness, &c.

XXI. *ASSIGNMENT of the* Copyright *of a* Book.

Parties.

Recital of title and contract.

Testatum.

Vendor assigns

copyright.

Habendum.

THIS INDENTURE (*d*), made the —— day of ——, 18—, Between [*vendor*], of, &c., of the one part; and [*purchaser*], of, &c., of the other part: Whereas the said [*vendor*] is the author and proprietor of the absolute copyright of a book or work, intituled, &c.; and has agreed with the said [*purchaser*] for the absolute sale to him of the said copyright, free from incumbrances, at the price of £——. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— by the said [*purchaser*] to the said [*vendor*] now paid, the receipt whereof is hereby acknowledged, the said [*vendor*] hereby assigns, and as beneficial owner conveys unto the said [*purchaser*], his executors, administrators, and assigns, All that the absolute copyright of and sole privilege of printing all that the said book or work intituled, &c.; and all future impressions of the said work. To have, hold, exercise, and enjoy the said copyright and premises

(*d*) Stamp, *ad valorem*, as a conveyance by way of sale.

unto the said [*purchaser*], his executors, administrators, and assigns, henceforth during the residue of the term of the said copyright now unexpired, for his and their own use and benefit, but subject always to such right as may now be subsisting in the publisher or proprietor of the last edition of the said book or work to prevent the publication of any future edition of the same until such last edition shall be out of print (*e*). XXI. **Assignment of Copyright.**

In witness, &c.

XXII. *DEED OF COVENANTS for* Title, *&c., on an* Assignment *of the* Copyright *in a Book by* Entry *at* Stationers' Hall.

THIS INDENTURE (*f*), made the —— day of ——, 18—, Between [*vendor*], of, &c., of the one part; and [*purchaser*], of, &c., of the other part: Whereas the said [*vendor*], being registered in the registry-book of the Stationers' Company in the City of London as the proprietor of a certain book or work, intituled, &c. (the first edition whereof was published on the —— day of ——), did lately contract with the said [*purchaser*] for the sale to him of the absolute copyright of the said book or work for the price of £——, which price or sum has been duly paid by the said [*purchaser*] to the said [*vendor*], as he doth hereby acknowledge. And whereas, by an entry made on or about the day of the date of these presents in the registry-book of the

Parties.

Recital of registered title;

—of sale and assignment to purchaser.

(*e*) The rights of the proprietor of a single edition of a work, and the precise meaning of the expression "out of print," have never been determined, and may be made the subject of many difficult questions: see *Sweet* v. *Cater*, 11 Sim. 572. It seems to be better to adopt the ordinary language of the trade than to attempt the very difficult task of defining the circumstances under which an edition may be said to be out of print. As to sale of an edition of a book.

(*f*) Stamp, 10*s*. By effecting the assignment by means of an entry at Stationers' Hall, the *ad valorem* duty on the conveyance will be saved: see *ante*, p. 681.

XXII. Deed of Covenant for Title to Copyright.

said Stationers' Company, upon the requisition of the said [*purchaser*], with the concurrence of the said [*vendor*], the said copyright was absolutely assigned unto the said [*purchaser*], his executors, administrators, and assigns, henceforth for the residue of the term thereof then subsisting, or was intended to be so assigned. NOW THIS INDENTURE WITNESSETH, that the said [*vendor*] [*if not the author, add,* for and against the acts and defaults only of himself, and of all persons claiming or to claim by, from, through, or under him], hereby covenants with the said [*purchaser*], that, at the time of making such entry, or of requiring the same to be made, as aforesaid, he the said [*vendor*] had good and lawful authority thereby to assign and assure the said copyright unto the said [*purchaser*], his executors, administrators, and assigns, free from all incumbrances, to hold and enjoy the same unto and by the said [*purchaser*], his executors, administrators, and assigns, thenceforth during the residue of the term thereof; And that the same shall and may henceforth, during the residue of the said term, be held, exercised, and enjoyed accordingly by the said [*purchaser*], his executors, administrators, and assigns, without any lawful interruption, invasion, or disturbance; And that from time to time, and at any time or times hereafter, upon every request and at the costs of the said [*purchaser*], his executors, administrators, or assigns, such further and other acts, deeds, assurances, matters, and things, shall be executed for the better and more effectually or satisfactorily assigning or assuring the said copyright and premises unto the said [*purchaser*], his executors, administrators, and assigns, as he or they shall reasonably request.

Testatum.

Vendor covenants for title, &c.;

for quiet enjoyment;

for further assurance.

In witness, &c.

XXIII. *ASSIGNMENT of the* COPYRIGHT *of a published Book and* MANUSCRIPT CONTINUATIONS *and* ADDITIONS, *and of a Book in MS., by the* ADMINISTRATOR *of the deceased Author* (*g*).

THIS INDENTURE (*h*), made the —— day of ——, BETWEEN [*vendor*], of, &c., of the one part, and [*purchaser*], of the other part. WHEREAS [*author*], late of, &c., and now deceased, was the author of a book or work intituled, &c., which was published in or about the year 18—. AND WHEREAS the said [*author*] at various times made divers additions to, and continuations, alterations, and corrections, of the said work. AND WHEREAS the said [*author*] was also the author of a certain work, or part of a work, still in manuscript, being, &c. AND WHEREAS the said [*author*] died in the year ——, intestate. AND WHEREAS in the month of ——, letters of administration of the estate and effects of the said [*author*], were duly granted to the said [*vendor*] by the Principal Registry of her Majesty's High Court of Justice, Probate Division. AND WHEREAS the said [*vendor*] has agreed with the said [*purchaser*] for the sale to him of the hereinbefore-mentioned works and manuscripts, with the said several additions, continuations, alterations, and corrections thereto and

Recitals of authorship, publication, and additions in manuscript, &c.;

death of author, letters of administration;

contract for sale.

(*g*) The evidence of an author's title to the copyright of an existing work is more defective than that to any other species of property. The thing itself is intangible and incapable of delivery; it is not created, nor is its existence necessarily manifested, by any deed or written document, and there is no compulsory registry of title: *vide ante*, pp. 680, 699 *et seq.* The consequence is, that no purchaser can be secure from a prior assignment, and where the author is in straitened circumstances, and is unable to meet with a purchaser who has confidence in his character, the sale of his works is either conducted under great disadvantage, or is rendered impracticable. As the *legal* title passes by an assignment, the remedy is beyond the equitable jurisdiction of the Court, which might otherwise, with no unexampled stretch of authority, have devised a rule similar to that created in the cases of *Dearle* v. *Hall*, and *Loveridge* v. *Cooper* (*ante*, Vol. III. pp. 953, 954), and capable of affording tolerable security in the majority of cases. It is to be hoped that the legislature may interfere by establishing a compulsory registry of the title to copyrights. In the meantime, it will of course be proper to search the registry at Stationers' Hall previously to completing any purchase, and to cause the purchase, when completed, to be registered.

As to evidence of title to copyright.

(*h*) Stamp, *ad valorem*, as a conveyance by way of sale.

XXIII. **Assignment of Copyright and Manuscript Additions, by Administrator.**

thereof, and the absolute copyright thereof, free from incumbrances, for the price of £——. NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of £——, by the said [*purchaser*] to the said [*vendor*], already paid, the said [*vendor*] hereby assigns, transfers, and as such personal representative of the said [*author*], deceased, as aforesaid, conveys unto the said [*purchaser*], his executors, administrators, and assigns, ALL THAT the aforesaid book or work of the said [*author*], deceased, intituled, &c., and all the additions, continuations, alterations, and corrections, whether in manuscript or printed, unpublished or already published, thereto and thereof at any time or times made by the said [*author*], deceased; And also, all that the unpublished manuscript or work, or part of a work, of the said [*author*], deceased, being, &c.; And all and every the papers whereon the last-mentioned work, or the aforesaid additions, continuations, and corrections, or any of them, respectively (being in manuscript), are, or is written, with their several and respective appurtenances.

Testatum. Vendor assigns copyright and manuscript work and additions.

Habendum. TO HOLD, EXERCISE, AND ENJOY the said several copyrights and premises, unto and by him the said [*purchaser*], his executors, administrators, and assigns, absolutely for his and their sole use and benefit.

IN WITNESS, &c.

POWERS OF ATTORNEY.

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INTRODUCTORY REMARKS.

Introductory Remarks.

WHEN one person executes a formal instrument empowering another to act in his stead, the donor of the power is generally called the principal (*i*);

Principal.

(*i*) Sometimes the constituent, the mandant, or the grantor.

Introductory Remarks.

Attorney.

Power of attorney.

Proxy.

Warrant of attorney.

the donee, the attorney (*k*); the instrument, a power of attorney (*l*).

When the instrument authorises the attorney to vote, it is called a proxy. When it authorises him to appear in an action of debt, and confess the action, or suffer judgment to go by default, it is called a warrant of attorney. Warrants of attorney, being sufficiently considered in another part of this work, will not be further noticed here.

General power.

Special power.

We shall see that, generally, every person, *sui juris*, may delegate authority to perform all lawful acts (*m*). He may authorise another to transact all matters connected with a particular employment, or he may confine the power to the doing of a single specified act. In the former case the power is called a general; in the latter, a special or particular power of attorney (*n*). Special powers seem required in some cases, as where the solicitor of the plaintiff in a foreclosure action attends to receive the mortgage-money: *Gurney* v. *Jackson*, 1 Sm. &

When a special power is required.

(*k*) Sometimes the procurator or the mandatory. The last expression, if used as the precise equivalent of the Roman *mandatarius*, is not correct, for the *mandatarius* always performed his part of the contract gratis—*mandatum nisi gratuitum nullum est*—and an attorney may be paid. As distinguished from a public attorney for prosecuting a suit, the attorney is called a private attorney. When appointed by a corporation aggregate to receive administration he is called a syndic: *In the goods of Elizabeth Darke*, 8 W. R. 273: 29 L. J., Prob. 21.

(*l*) Sometimes a letter of attorney, a mandate, a procuration, and (in our older books) a warrant (*garant*) of attorney. But the last phrase has now a restricted signification. In Scotland a power of attorney is called a factory and commission, or a mandate, but when it is to be exercised abroad, the English term is used. The Indian term is *mukhtár-*, or *mukhtyár-*, *námeh*.

(*m*) So the Roman *mandatum* could not be *contra bonos mores*. Our law does not recognise the relation of principal and agent as existing between wrongdoers: *Sharland* v. *Mildon*, 5 Ha. 469.

(*n*) See further as to the distinction between general and special powers of attorney: *Whitehead* v. *Tuckett*, 15 East, 400, 408, *per* Lord *Ellenborough*,; *Cotman* v. *Orton*, 10 L. J. Ch. 18. In the case of a trader going abroad, his having left a general power, will not prevent the Court from holding that he has committed an act of bankruptcy, where he has not provided means for paying bills which fall due in his absence: *Ex parte Kilner*, *In re Bryant*, 3 Mont. & A. 722.

Introductory Remarks.

G., App. xxvi.; *Bourdillon* v. *Roche*, 27 L. J. Ch. 681 (*o*). Where application is made for payment out of Court of a sum exceeding 10*l.* to the solicitor of the party entitled thereto, a specific authority is needed, such as a special power of attorney or a letter properly verified: *Middleton* v. *Younger*, 17 Jur. 664; *Waddilove* v. *Taylor*, 13 Jur. 1023; *Hawkins* v. *Dod*, 1 Hare, 146. See *Armstrong* v. *Stockham*, 11 Jur. 97; *Ex parte De Beaumont*, 13 Jur. 354; *Carr* v. *Eastabrook*, 2 Cox, 390, seems of doubtful authority (*p*). And even upon payment to creditors of sums *under* 10*l.*, the Court requires a letter or other document signed by each party entitled, before payment will be made to the solicitor in the

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(*o*) Formerly in the case of a sale, when the vendor did not attend in person, the purchaser was entitled to demand his written authority to pay the money to his solicitor or agent: *Viney* v. *Chaplin*, 2 De G. & J. 468; *Ex parte Swinbanks*, 11 Ch. D. 525. But now by sect. 56 of the Conveyancing and Law of Property Act 1881 (44 & 45 Vict. c. 41), when a solicitor produces a deed having in the body thereof or endorsed thereon a receipt for consideration money duly signed by the person entitled to the money, the deed itself is a sufficient authority for payment of the money to the solicitor: see the section set out in full, *ante*, Vol. II. p. 646.

(*p*) Mr. Grant, in his learned book on corporations, lays down (p. 150, note (*b*)) that "a demand of rent in the name of the corporation, by its head (as mayor or dean), is good and effectual, without authority under the common seal," and cites Yearb., 1 Ed. 5, fol. 5, pl. 10. The passage referred to seems quite the other way: "Et coment que le dean mesme veut demander rent en nom del' dean & chapiter, il est bon, car il covient avoir un command desous le seel del' chapiter, ou auterment il n'est bon: et issint est d'un maior & un communaltie." An express power to a public attorney to demand and receive the costs of an action is unnecessary: *Mason* v. *Whitehouse*, 4 Bing. N. C. 692; *Connellan* v. *Harman*, 6 Ir. Jur. 138. So in equity a party serving a subpœna to receive the costs for which it is issued: *Empringham* v. *Short*, 12 L. J. Ch. 144. A power is unnecessary to authorise payment to the solicitor of a company of the parliamentary deposit, or to its secretary, of money paid into Court under sect. 85 of the Lands Clauses Act: *In re the Dartmouth and Torbay Railway Company*, 9 W. R. 609; *Ex parte the London, Chatham and Dover Railway Company*, 8 W. R. 636. It is sufficient if the original petition be sealed with the company's seal. Under an award that A. shall pay a sum to B. or his attorney C., no power of attorney to C. to demand the money is necessary: *Hare* v. *Fleay*, 11 C. B. 472.

When power unnecessary.

Introductory Remarks.

cause: *Staines* v. *Giffard*, 20 Beav. 484 (where the consent of one of twelve parties was dispensed with). And see *Brandling* v. *Humble*, Jac. 48; *Downing* v. *Picken*, Kay, App. I.; *Kelsall* v. *Minton*, 2 Beav. 361; *Mansfield* v. *Green*, W. N. 1866, p. 220 (*q*). Where a party has been ordered to deliver up deeds to A., and delivers them to A.'s solicitor, in the absence of a special power, it seems questionable whether the latter has any right to receive them, unless he is duly authorised by power of attorney: *Bull* v. *Faulkner*, 2 De G. & S. 772, 776. And where a demand of money payable under an award is made by a stranger, a similar authorisation is requisite: *Tabbut* v. *Archer*, 2 Dowl. N. S. 677. Not so, where a demand is to be made of the execution of deeds under an award: *Ibid; Kenyon* v. *Grayson*, 2 Smith 61; *Lodge* v. *Posthouse*, Lofft. 388. And if the award order payment to the plaintiff or his attorney, naming him, the attorney may demand payment without any power of attorney: *Hare* v. *Fleay*, 11 C. B. 472.

Another instance, in which a special power seems necessary, is where a corporation appoints an attorney to demand rent. Then, according to an old case, the power must specify the land out of which the particular rent arises, and the name of the party from whom it is to be demanded: *Knap* v. *Jewelch*, 1 Br. & G. 138.

Limited power.

Unlimited power.

Powers of attorney are also limited or unlimited. A limited power is one containing precise instructions as to the mode of executing it. An unlimited power is one which, in this respect, leaves the attorney to his own discretion. A power may also be for a certain period (*mandatum in diem dilatum*); or it may be determinable only by revocation, renunciation or exhaustion.

The subject of powers of attorney forms a branch of the law relating to principal and agent, respecting which the reader is referred to the works of

(*q*) See further as to authority to receive payment of money out of Court: Daniell Ch. Pr. Vol. II. Part I. p. 1783, *et seq.* For form of order, see 2 Seton, 838, No. 3.

Introductory Remarks.

Pothier (*r*), Story (*s*), and Paley (*t*). It is here proposed to consider the subject under the following heads :—(1) The Principal; (2) The Attorney; (3) The Instrument, its Attestation and Authentication; (4) The Extent of the Attorney's Authority; (5) The Exercise of the Power; (6) The Rights and Liabilities of the Principal and Attorney; (7) The Determination of the Power; and (8) Stamps on Power of Attorney.

1. The Principal.

Every person may be considered competent to be a principal, unless (1) he is generally incapable of binding himself by any legal act, or (2) his general competency is restricted by a relation in which he stands to the act proposed to be authorised, or the subject-matter of the power proposed to be delegated. A prisoner under a charge of felony may execute before his trial a power of attorney to obtain money for his defence, or for paying a *bonâ fide* debt: *R.* v. *Coxon*, 7 C. & P. 651. A trustee in bankruptcy may execute all powers of attorney, deeds, and other instruments expedient or necessary for the purpose of carrying into effect the provisions of the Bankruptcy Act, 1883, (46 & 47 Vict. c. 52): See sect. 56, subsect. 4. of that Act.

Persons generally incompetent.

Persons generally incompetent to be principals are infants, lunatics, and (to some extent) married women. Of these in their order.

Infants.

Powers of attorney, like all instruments which delegate a mere power and convey no interest, are not merely voidable, but absolutely void when executed by an infant: *Zouch* v. *Parsons*, 3 Burr. 1794, 1804; *Allen* v. *Allen*, 2 Dr. & W. 307, 430; see also Dart V. & P. 2, note (*a*). And though an infant may

(*r*) Traité du Contrat de Mandat. Oeuvres de Pothier, Paris, 1847, Vol. V. p. 171, *et seq.*

(*s*) Commentaries on the Law of Agency, 9th ed., Boston (U.S.), 1882.

(*t*) A treatise on the Law of Principal and Agent, by William Paley, 3rd ed., by J. H. Lloyd, London, 1833.

The Principal.

appoint an attorney to do any act which is for his benefit, as to receive livery of seisin for him, this is an exception to the general rule: *Palpyman* v. *Gamble*, 1 Roll. Ab. 730 (*u*). Even where by custom he may make a feoffment at the age of fifteen years, he cannot do so by attorney: *Whittingham's Case*, 8 Rep. 45a; for a custom enabling persons under legal disability must be strictly pursued: *Combe's Case*, 9 Rep. 766. But the infant's guardian may appoint an attorney to act in reference to the property of his ward, as, for instance, to receive a debt due to the latter, or to take out administration with the will annexed: *Graham* v. *Maclean*, 2 Curt. 659. In *Ruck* v. *Barworth*, 25 L. T. 242, the guardian of an infant residing in England was even ordered to execute a power of attorney authorising a solicitor of a court in India to proceed with a suit there on the infant's behalf. Such, it seems, is the practice in India when an infant is entitled as *cestui que trust* to property subjected to a suit in that country.

Infant copyholders.

In the case of infant copyholders, the statute 11 Geo. 4 & 1 Will. 4, c. 65, provides that an infant having no guardian may by deed appoint an attorney to take admittance; and that, in default of an infant appearing by his guardian or attorney to be admitted, the lord, or his steward, may, after three proclamations, appoint an attorney for the infant, and admit him by such attorney: see sects. 4 and 5 of that Act; see also *Dimes* v. *Grand Junction Canal Co.*, 8 Jur. 847.

Lunatics.

The author of "The Touchstone" lays down, p. 218, that if one that is *non sanæ memoriæ* make a letter to deliver seisin, a livery made after the lunatic's recovery, without new assent, is void. He was therefore of opinion that in the case put, the power, and the act done pursuant thereto, were null. And, in a modern case, a lunatic tenant in

(*u*) In *Morgan* v. *Morgan*, 2 Curt. 679, a minor executed a proxy appointing his father curator *ad litem*, for the purpose of proceeding against his wife for a divorce. An infant steward may make a deputy, Coke, Cop. s. xlvi.

The Principal.

tail of copyholds having given a power to procure her admission as tenant in tail, and then to surrender and take a readmission in fee, it was held that the transaction was invalid and the estate tail was not barred: *Elliott* v. *Ince*, 7 De G. M. & G. 475. Here there was no contract: the lunatic's act was purely voluntary. In *Ex parte Bradbury*, 1 Mont. & C. 625, however, a creditor of two partners, A. and B., gave C. a general power of attorney, under which C. consented that B. should become solely responsible for the debt due to the principal. The partnership being dissolved and the debt unpaid, B. became bankrupt and C. proved the debt against his separate estate. After the fiat the principal was found to have been lunatic since the third day before the execution of the power. It was held, nevertheless, that the proof was properly made. And it is submitted that this decision is in accordance with the leading case of *Molton* v. *Camroux* (2 Exch. 487; 4 Exch. 17), where it was decided that a contract is not necessarily vacated by the insanity of one of the parties thereto. It may, indeed, be safely laid down that if a person apparently sane, executes a power pursuant to which his attorney enters into a fair and *bonâ fide* contract, which is executed and completed, such contract cannot be set aside on the ground of the invalidity of the power by reason of the principal's insanity.

By sect. 40 of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), it was enacted that—

Power of attorney of married woman.

"(1.) A married woman, whether an infant or not, shall by virtue of this Act have power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do; and the provisions of this Act relating to instruments creating powers of attorney shall apply thereto.

"(2.) This section applies only to deeds executed after the commencement of this Act."

Married women.

A married woman may therefore execute a power of attorney in reference to the management of property to which she is entitled, whether under

The Principal.

any settlement or by statute, to her separate use without restraint on anticipation: see the Married Women's Property Act, 1882, sects. 1, 2, 5, 6, 19. But except in such cases the constitution of an attorney by her alone would seem to be simply void; unless, perhaps, before her marriage she reserve a power to constitute an attorney. If under the former practice a man declared on a joint lease by husband and wife, delivered under their power of attorney, this, it seems, would not have maintained the declaration, which should have been against the husband alone, as the lease was only effectually delivered by him: *Wilson* v. *Roche*, Yelv. 1; but see *Cooper's Case*, 2 Leon. 200. As to property vested in a married woman as executrix or administratrix, the husband must formerly have joined in appointing an attorney in reference thereto; but now his concurrence is unnecessary, so far as relates to the transferring of any Government annuity, or of deposits in any post-office, or savings bank, or in any other bank, or any sum forming part of the public stocks or funds transferable in the books of the Bank of England, or of any other bank, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society: see the Married Women's Property Act, 1882, sect. 18, and compare sect. 6. The concurrence of the husband will, however, apparently still be required to a power of attorney by his wife as executrix or administratrix in some cases, *e.g.*, where it is desired to sell or receive the rents and profits of houses and land, or to get in debts and choses in action belonging, or due to the estate. If a husband and his wife join in appointing an attorney to act for them in all matters, on the death of the husband the power will cease to bind her as to choses in action, excepting those actually reduced into possession, or presently payable and released in the husband's lifetime: *Re Jones*, 5 W. R. 336. In fact in all such cases the power is practically the

husband's, but appears, as we shall see, to be determinable not only by his death, but by that of the wife. The Principal.

A married woman having been examined, may execute a power directing payment of a fund in Court to her husband. But in such a case the Court, to avoid influencing her decision, will refuse to send out with the commission a power for her execution, authorising such payment: *Allatt* v. *Bailey*, 1 W. R. 383.

By 9 Geo. 1, c. 29, s. 1 (repealed and re-enacted by 11 Geo. 4 & 1 Will. 4, c. 65, see s. 4), a *feme coverte* copyholder was empowered to appoint by deed an attorney to be admitted on her behalf. And by sect. 11 of the latter act (repealing a similar provision in 47 Geo. 3, sess. 2. c. 8), she might have suffered a recovery by attorney. Prior to 47 Geo. 3, the appointment of an attorney by husband and wife for the purpose of surrendering her copyhold to a tenant to the plaint for suffering a recovery was valid as the act of the husband seised with his wife in her right: see 1 Scriv. Cop. 66, note (*o*); *Doe* d. *Smith* v. *Bird*, 5 B. & Ad. 695; 2 N. & M. 679. See also *Doe* d. *Shelton* v. *Shelton*, 3 A. & E. 265. As to lands held in ancient demesne, see 59 Geo. 3, c. 80, s. 1, repealed and re-enacted by 11 Geo. 4 & 1 Will. 4. c. 65.

Relative incompetence to appoint an attorney may arise *first* from the relation in which the proposed principal stands to the act intended to be authorised. Thus it seems very doubtful whether a parent residing abroad can appoint an attorney to claim and receive under a writ of *habeas corpus*, the custody of an infant child: *Re Preston*, 5 Dowl. & L. 233, 245, *per Patteson*, J. The parent should himself appear before the Court. And if the act be inseparably annexed to the person, as in the case of doing homage and fealty, no one can perform it by a delegate: *Combe's Case*, 9 Rep. 76 a; see *Warner* v. *Hargrave*, 2 Roll, Rep. 393. So, as a general rule, in the absence of express authority to do so, a personal trust, a confidence, cannot be delegated: *Att.-Gen.* v. *Scott*, 1 Ves. Sen. 413; *Hawkins* Persons relatively incompetent. Trustee.

The Principal.

v. *Kemp*, 3 East, 410 (*x*). Not even to a co-executor or co-trustee: *Crewe* v. *Dickin*, 4 Ves. 97; *Att.-Gen.* v. *Gleg*, 1 Atk. 356; much less to a proposed new trustee: *Pearce* v. *Pearce*, 22 Beav. 248. But a trustee of property situate abroad may, if resident in England, appoint a local attorney to exercise discretion in the matter of the trust: *Stuart* v. *Norton*, 9 W. R. 320 (*y*). And, with the consent of the *cestuis que trustent*, a co-trustee may authorise the other trustees to act on his behalf in reference to the trust-estate. So a trustee to pay dividends may appoint his *cestui que trust* his attorney to receive the dividends: *Re Thornton's Trust*, 9 W. R. 475; or make a third party his attorney to receive and pay them over: *Clark* v. *Laurie*, 1 H. & N. 452. The donee of a power, the execution of which involves the exercise of discretion reposed in him, cannot delegate such discretion, unless, of course, he be expressly authorised to do so: see Sugd. Powers, 180. Thus an executor empowered to sell cannot sell by attorney; nor can a tenant for life with a leasing power make leases by attorney: *Combe's Case*, 9 Rep. 756; *Lady Gresborn's Case*, cit. *ibid.* 76 a. He may, however, unless, perhaps, a particular mode of execution is required, execute a deed of appointment by attorney, if such deed be prepared, or if he have indicated the precise appointment: see Sugd. Pow. 180, 181 (*z*). Here no

(*x*) In Ireland, *Sugden*, L.C., refused to authorise the transfer of trust funds to the attorney of the trustees: *Re Fishbourne*, 3 J. & L. 584. An arbitrator cannot of course delegate his authority: see *Whitmore* v. *Smith*, 5 H. & N. 825.

(*y*) In *Munch* v. *Cockerell*, 5 My. & C. 178, see pp. 212—214, trustees of a fund in India died or left that country, and the trustees in England were held entitled to give agents in India the control and management of funds invested there—but not of cash-balances.

(*z*) See as to the execution by attorney of general powers: 1 Chance on Powers, sects. 711, 712, 713. Mr. Chance (sect. 712) appears to think that a general attorney might execute a power to charge property for the principal's benefit. (*Quære*, however, if the letter of attorney be not executed before the power has become capable of being exercised?) See, too, *Eaton* v. *Sanxter*, 3 L. J. (N. S.) Ch. 197, where a title was vainly objected on the ground of a trustee for sale having executed the conveyance by attorney.

The Principal.

discretion is delegated, but only power to carry such discretion into effect. So in *Offen* v. *Harman,* 29 L. J. Ch., a power, the due execution of which required the consent by deed of a trustee, was held to be well executed, where such consent was given under a power of attorney, it appearing that no discretion had been delegated. So trustees to elect and present a clerk to a benefice, having fixed on the object, may sign the presentation by proxy: *Att.-Gen.* v. *Scott,* 1 Ves. Sen. 413. So under the former practice one assignee having determined to sign the certificate of a certain bankrupt, might have authorised his co-assignee (or, apparently, any one else) to act for him in that behalf: *Ex parte Rigby,* 19 Ves. 463. So a trustee of a copyhold may appoint an attorney to surrender it, and the tender of a deed appointing such attorney appears sufficient within the 17th section of the Trustee Act, 1850: *Rowley* v. *Adams,* 14 Beav. 130.

Arbitrator.

So an arbitrator, having determined on his award, may appoint an attorney to draw it: *Baker* v. *Cotterill,* 7 D. & L. 20.

Steward's deputy.

So, though the deputy of the steward of a manor cannot make a deputy, he can empower an attorney to do a particular act, as to take a particular surrender: *Parker* v. *Kett,* 1 Salk. 96.

Executor.

Under certain circumstances an executor may be justified in authorising an attorney to get in the testator's debts, and in allowing him a salary for his trouble: *Hopkinson* v. *Roe,* 1 Beav. 180.

Receiver.

And where a receiver had been appointed of an estate, part of which was in India, he was permitted to send out a power authorising the attorney to receive the funds in India and transmit them to this country: *Keys* v. *Keys,* 1 Beav. 425.

Copyholder.

Whatever act a copyholder may do himself, he may in general authorise another to do for him, either in or out of Court: *Combe's Case,* 9 Rep. 75 a; *Hardy* v. *Reeves,* 4 Ves. 466; *Att.-Gen.* v. *Vigor,* 265. See also 1 Scriv. Cop. (*a*). But if the

(*a*) A court roll stating that a surrender was by power of attorney, would be secondary evidence of the power, if this could not be found after a sufficient search: *Doe* d. *Counsell* v. *Caperton,* 9 Car. & P. 112.

The Principal.

act be warranted only by a special custom, such as one that a copyholder out of court may surrender into the hands of the lord by two customary tenants, or that a copyholder for life may make estate for twenty years to continue after his death, the custom must be strictly pursued, and the act done in person: see Coke Cop. s. xxxiv.

Railway company.

It would seem that one railway company could not, without the authority of parliament, delegate to another powers conferred by statute on the former: *Winch* v. *Birkenhead, &c., Rail. Co.*, 16 Jur. 1035; *Great Northern Rail. Co.* v. *Eastern Counties Rail. Co.*, 9 Ha. 306. And a solicitor or public attorney cannot delegate a right vested in him as such, *e.g.*, a right to demand costs ordered to be paid: *Clarke* v. *Dignum*, 2 Jur. 67.

Public attorney.

Relative incompetence to appoint an attorney may arise, *secondly*, from the proposed principal's relation to the subject-matter of the authority intended to be delegated. Thus, except in the case of stock standing in the name of an infant or person of unsound mind jointly with any person not under legal disability (8 & 9 Vict. c. 97, s. 3), one joint-tenant or tenant in common cannot appoint an agent for himself and his co-tenants to deal with the joint property. Otherwise in the case of partners. Each partner has an implied authority, where the business is usually done through the instrumentality of agents, to appoint an attorney for the firm; and even after a dissolution, such authority may continue for all purposes of winding up: *Butchart* v. *Dresser*, 4 De G. M. & G. 542; see Story, Agency, s. 39. So it would seem that a power of attorney to prove a partnership debt, to vote in the choice of trustees, or to oppose the bankrupt's discharge, is well executed by one partner on behalf of himself and co-partner: *Ex parte Mitchell*, 14 Ves. 597; see Lind. Part. 1085. But one partner cannot authorise an attorney to enter an appearance and submit to judgment for a co-partner: *Hambridge* v. *De la Crouée*, 4 D. & L. 466. Nor can he bind his co-partner by a reference to arbitration, though he have an authority to receive and pay the debts due

Co-tenant.

Partner.

to and owing by the firm: *Hatton* v. *Royle*, 3 H. & N. 500. **The Principal.**

A person solely entitled to a grant of administration, and residing in this country, may, if unable to administer, appoint an attorney to receive administration: *In the goods of Roberts*, 1 Sw. & T. 64. If, however, the principal be able to take the grant himself, the Court will decline to decree it to his attorney: *In the goods of Burch*, 9 W. R. 639 (*b*). Person entitled to administer.

2. The Attorney.

Speaking generally, except in the case of idiots, lunatics, or persons otherwise *non compotes mentis*, a naked authority, such as is delegated by a power of attorney, may be exercised by any one, whether *sui juris* or not: Co. Litt. 52 a (*c*). It is said, however, that a trustee for several *cestuis que trustent* acts improperly in taking a power of attorney from one *cestui que trust* only: *Hodson* v. *Cash*, 1 Jur. (N. S.) 864. Infants, married women, aliens, persons attainted or outlawed, may be private attorneys. The law regards them merely as instruments or conduit-pipes, and only looks at the principals. It has, accordingly, been decided that an infant may, as an attorney, give livery upon a feoffment, and so may a *feme coverte*, though it be to her own husband: *Grange* v. *Tiving*, O. Bridg. 109; see *White* v. *Cayler*, 1 Esp. 200 (*d*). A married woman may also act as attorney of her own husband, or as the attorney of

Trustee.

Persons under disability.

Married women.

(*b*) In *In the goods of Reitz*, 3 Hagg. 766, the Prerogative Court refused to grant administration *cum testamento annexo* to the attorney of an official board at the Cape of Good Hope, acting on behalf of the next-of-kin, where there were several such, and also a creditor and legatee resident in England.

(*c*) The passage from the Mirror cited in Co. Litt. 128 a, and mentioned by Lord *Hardwicke* in *Hearle* v. *Greenbank* (3 Atk. 710; 1 Ves. Sen. 298), as Mr. Butler remarks (Co. Litt. 52 a, note 2), refers to public attorneys.

(*d*) *Eddleston* v. *Collins*, 3 De G. M. & G. 1, decides that an infant of competent understanding may, as deputy steward, examine a married woman and receive a surrender of her copyhold estate.

The Attorney.

another, unlesss, perhaps, her husband expressly dissent: see Story, Agency, s. 7 (*e*).

Partner.

If the attorney be one of two partners, this, of course, gives the other no authority: *Edmiston* v. *Wright*, 1 Camp. 88.

Attorney-administrator out of the jurisdiction.

The Court will grant administration to an attorney resident out of the jurisdiction, if the sureties to the bond reside in England: *In the goods of O'Byrne*, 1 Hag. 316; *In the goods of Lesson*, 1 Sw. & Tr. 463.

3. The Instrument, its Attestation and Authentication.

When the instrument must be a deed.

It has sometimes been laid down that a power of attorney must be given by deed (*f*). The cases do not bear out this proposition. It is true that an attorney who is only authorised by parol cannot make or take livery: *Gregory* v. *Badbourne*, cit. Co. Litt. 486, note (*g*); nor execute a deed for his principal: *Steiglitz* v. *Egginton*, Holt, N. P. Rep. 142; *Williams* v. *Walsby*, 4 Esp. 220; *Hibblewhite* v. *McMorine*, 6 M. & W. 200, 214; *Tayler* v. *Great Indian Peninsular Rail. Co.*, 4 De G. & J. 559; and *Horsley* v. *Rush*, cit. *Harrison* v. *Jackson*, 7 T. R. 209, the case of a charter-party under seal. But the reason (such as it is) in the former case is "because it concerneth matter of freehold:" Co. Litt.

When the instrument must be under seal.

(*e*) In *In the goods of Elderton*, 4 Hagg. 210, administration with the will annexed was granted to the wife of a residuary legatee as his attorney.

(*f*) In *Rex* v. *Fauntleroy*, 1 C. & P. 421, it was contended (unsuccessfully of course) that a power of attorney *under seal* was not a deed. A warrant of attorney need not be under seal: *Kinnersley* v. *Mussen*, 5 Taunt. 264.

(*g*) See 2 Rolle, Abr. 8. Mr. Burge (Comm. III. 985, 986) lays down that by the law of England the letter of attorney, under which the agent is authorised to convey real estate, must not only be by deed, but must expressly contain a power for that purpose. The learned commentator, I presume, refers here to a general power for the transaction of all the principal's affairs. In a case cited *ante*, Vol. I., p. 93, a title was rejected on the ground that the estate came to the owner, who was abroad, by descent, subsequent to the execution of a general power under which the attorney assumed to sell.

The Instrument, its Attestation and Authentication.

486 ; and the rule that *inter vivos* an agent, in order to bind by deed, must have an authority by deed, is a technical rule, apparently peculiar to the law of England : *Berkeley* v. *Hardy*, 5 B. & C. 355 (*h*). The rule arises, perhaps, from the circumstance that otherwise the principal might by parol become bound in specialty without the consideration which his seal imports. So if a corporation aggregate appoint a syndic to receive administration : *In the Goods of Elizabeth Darke*, 8 W. R. 273 ; or an attorney to deliver a lease : *Dumper* v. *Syms*, Cro. Eliz. 816 ; Grant, Corp. 150, note ; to demand rent : *Knap* v. *Iewelch*, 1 Br. & G. 138 ; to distrain, sell, and take the rent out of the proceeds : Grant, Corp. 150, note ; to sell corporation-estates : *Bowen* v. *Morris*, 2 Taunt. 374, 387 ; to buy land : *Gooday* v. *The Colchester, &c., Rail. Co.*, 17 Beav. 132 ; or to vote in the choice of trustees in bankruptcy : *Ex parte the Bank of England*, 1 Swanst. 10 (*i*) ; such appointment is a solemn matter, and should be under the corporate seal (*k*). But a private person (and, it may be presumed, a corporation sole) may constitute by parol an attorney to deliver a lease for years : Co. Litt. 486, note,—at least a lease not required by the Statute of Frauds to be in writing. A mere authority in writing, signed by the principal, is sufficient to delegate power to sell (though not to convey) freeholds and leaseholds : *Hesse* v.

(*h*) See, however, Lord *Lovelace's Case*, 1 Sir W. Jones, 268 ; *Ball* v. *Dunsterville*, 4 T. R. 313. A court of equity might, in the case of an attorney, appointed by parol, executing a deed, compel the principal to confirm and validate it (Story, Agency, sect. 49). As to presuming the existence of a proper authority by deed : see *Tupper* v. *Foulkes*, 2 F. & F. 166, *per Keating*, J. ; see 9 W. R. 349 ; 7 Jur. (N. S.) 709. But see *Berkeley* v. *Hardy*, *supra*, *per Abbott*, C.J.

(*i*) The public officer of a joint-stock banking company may appoint an attorney to vote on behalf of the company in the choice of trustees in bankruptcy : *Ex parte Ackroyd*, 1 M. D. & D. 555 ; *Ex parte the Manager of the Western Bank of Scotland*, 30 L. T., Bkcy. 173.

(*k*) Accordingly a quasi corporation, such as churchwardens and overseers, having no corporate seal, appear to have been considered unable to authorise a person to continue to receive the dividends of stock on which the purchase-money of parish lands was invested : *Ex parte Annesley*, 2 Y. & C. 350.

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Bryant, 2 Jur. (N. S.) 922. Money has been paid out of Court to an attorney appointed by a mere *epistola*: *Ex parte Candy*, 5 L. J. (N. S.) Ch. 14; and see *Staines* v. *Gifford*, 20 Beav. 484. And a written authority, not under seal, to indorse bills of exchange was held to be a power of attorney requiring a stamp under 55 Geo. 3, c. 184: *Walker* v. *Remmett*, 2 C. B. 850.

An attorney is usually constituted by a separate instrument, but sometimes by a clause in an indenture or deed-poll containing other matter. Thus a power of attorney is properly inserted in composition-deeds, and in assignments of *legal* choses in action by way of mortgage: see *post*, p. 885; see also *ante*, tit. MORTGAGES, Vol. III., p. 819. And in one case a power of attorney was given by an instrument which, on the principal's death, was held to operate as a devise: *Doe* d. *Cross* v. *Cross*, 8 Q. B. 714. In the case of an indenture, it was long since decided that the power was valid, though the attorney was not a party: *Moyle* v. *Ewer*, Cro. Eliz. 905; *S. C.*, Noy, 49; *Dicker* v. *Moland*, 2 Rolle, Abr. 8, pl. 12; and see *Doe* d. *Maddock* v. *Lynes*, 3 B. & C. 388; *Storer* v. *Gordon*, 3 Mau. & S. 322.

Attorney need not be party to indenture whereby power given.

General observations on the instrument.

The nature of the instrument in question will be sufficiently exemplified by the following precedents. It may here be noted that the practice of making a power of attorney exercisable in the name of the principal's personal representatives is quite useless. These instruments often contain a power to appoint substitutes, which should be accompanied by a power to revoke such appointment,—and the instrument usually closes by an agreement to ratify the attorney's acts, and—when the power is to be exercised abroad—a declaration that in case it be revoked, those acts shall, as regards persons subsequently dealing with him, be valid unless they have had express notice of the revocation. Bank of England powers provide that if the power be not acted upon till after the principal's death, the transfer made thereunder shall, as regards the Bank, bind his personal representatives, unless notice in writing

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of the death have been previously given to the Bank. Where there are more attorneys than one, a declaration is often added, resembling a trustee's indemnity clause, and providing that each attorney shall only be liable for his own wilful default. And the instrument sometimes contains an appointment of another attorney in case of the death or incapacity of the original attorney.

Execution of the instrument.

If the principal seal, his signature is not essential, unless by some enactment the attorney must be appointed by writing under the principal's hand.

The attestation and authentication of the instrument.

The execution by the principal (or by each principal, if there be more than one) is generally attested by two witnesses; and the Bank of England and other public bodies require that number. Such attestation is also required in Australia and in most other British colonies. Some information on this subject will be found in the second volume of Burge's *Commentaries*, p. 768 *et seq.*, and *ante*, vol. ii., p. 397, note (*l*). In all cases of powers intended to be exercised abroad it will be prudent to have two witnesses. One of the witnesses should depose to the due execution of the instrument in his presence and in that of the other witness before a notary-public, or a mayor having a corporate seal. The notary or mayor, as the case may be, should verify this deposition. Forms of such deposition and verification will be found *infra*.

Any declaration accompanying the powers should be taken and verified in a similar manner.

Authentication of colonial and foreign powers, to be exercised in England.

As to the authentication of powers executed abroad, and intended to be exercised in this country, there is a distinction between powers executed in any part of the British empire and those executed in a country not under her Majesty's dominion. In the former case our courts will take judicial notice

(*l*) In some colonies, particular modes of attestation and verification are required, which must be ascertained by inquiry from the agents of the particular colonies, or other persons acquainted with their procedure.

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of the seal or signature of the notary-public or other person authorised to administer oaths, attached, appended or subscribed to the certificate of the execution and attestation: see 15 & 16 Vict. c. 86, s. 22; *Armstrong* v. *Stockham*, 24 L. J. Ch. 176; *Cole* v. *Sherard*, 11 Exch. 482; *Hutcheon* v. *Mannington*, 6 Ves. 823; and see Seton, 104. In the latter, such seal or signature must be verified: *Lord Kinnaird* v. *Lady Saltoun*, 1 Madd. 227; *Garvey* v. *Hibbert*, 1 Jac. & W. 180; *Haggitt* v. *Iniff*, 5 De G. M. & G. 910; *In re Earl's Trust*, 4 K. & J. 300; *Salvidge* v. *Tritton*, 22 L. J. Ch. 883; *Re Davis's Trusts*, L. R. 8 Eq. 98; and see Seton, 29, 105 (*m*). Except in cases coming within 18 & 19 Vict. c. 42, s. 3 (*n*), where the witness deposes to the due execution of the instrument, in the case of a foreign affidavit, the authority of the person administering the oath must be shown either by affidavit or notarial certificate: *Cross* v. *Cheshire*, 15 Jur. 993. Elaborate authentication has been dispensed with. Thus, in *Ex parte Candy*, 5 L. J. (N. S.) Ch. 14, the Court allowed money to be paid out to an attorney constituted by a letter (*epistola*) upon the joint petition of the principal (who was in India) and his attorney,

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(*m*) See *Savage* v. *Hutchinson*, 24 L. J. Ch. 232, as to the jurat to a marksman's affidavit made in America.

(*n*) By this section any document, purporting to have affixed, impressed, or subscribed thereon or thereto the seal and signature of any British ambassador, envoy, minister, chargé d'affaires, secretary of embassy or of legation, consul general, consul, vice-consul, acting consul, pro-consul, or consular agent, in testimony of any such oath, affidavit, affirmation or act having been administered, sworn, affirmed, had or done by or before him, shall be admitted in evidence without proof of any such seal and signature being the seal and signature of the person whose seal and signature the same purport to be, or of the official character of such person.

As to affidavits sworn out of England: see *Dalmer* v. *Barnard*, 7 T. R. 251 (Isle of Man); *Omealy* v. *Newell*, 8 East, 364 (France); *French* v. *Bellew*, 1 Mau. & S. 302 (Ireland); *Watson* v. *Williamson*, 1 Dowl. 607; and *Ellis* v. *Sinclair*, 3 Y. & J. 273 (Scotland). The foreign notary's certificate seems conclusive as to the person before whom the affidavit is made having authority to administer oaths: *Ex parte Hutchinson*, 5 D. & L. 523.

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and proof of the handwriting of the letter. And in *Filoge* v. *Stewart*, 4 L. J. (N. S.) Ch. 33, an affidavit verifying the handwriting of the attesting witness was held sufficient. The attorney has, however, in the case of a power executed abroad, been required to make an affidavit that to his belief it was in force and unrevoked: *Agabeg* v. *Hartwell*, 4 L. J. (N. S.) Ch. 190; and in the case of an Indian power to receive funds in a suit, proof has been exacted that the principal was living at the date of the decree: *Goodson* v. *Alexander*, 1 Jur. 37.

Enrolled copy of foreign or colonial power not evidence.

In leaving the subject of foreign powers, it may be noted that an examined copy of a letter of attorney, enrolled in a colonial record office, is not admissible in evidence without more, although by the local law, such copy would be receivable: *Faulkner* v. *Daniell*, 3 Ha. 221.

Forged power.

We may conclude this section by noticing some cases where the instrument has been forged, altered or lost. If a power of attorney be forged, it is a nullity as regards the person who purports to be principal. Thus, if stock be sold under such a power, the stockholder may maintain money had and received against the party holding the proceeds: *Marsh* v. *Keating*, 2 Cl. & F. 250. And a person whose stock was transferred under a forged power, has been held entitled to recover his dividends, though he knew that some months previously the stock had been transferred, and omitted to tell the bank, and did not demand payment till after the offender's escape: *Davis* v. *Bank of England*, 2 Bing. 393; *S. C.* (in error), 5 B. & C. 185; and see *Ashby* v. *Blackwell*, 2 Eden, 299; *Stone* v. *Marsh*, 6 B. & C. 551; *Sloman* v. *Bank of England*, 14 Sim. 475; *Bank of Ireland* v. *Trustees of Evans' Charities*, 5 H. L. C. 389; *Taylor* v. *Midland Rail. Co.*, 6 Jur. (N. S.) 595. If a person is acting *ex mandato*, those dealing with him are bonnd to inquire into the authenticity of the authority: *De Bouchout* v. *Goldsmid*, 5 Ves. 213, *per* Lord *Eldon*. And see *Alexander* v. *M'Kenzie*, 18 L. J. C. P. 96, *per Williams*, J.; *Orr* v. *Union Bank of Scotland*, 1 Macqueen, 513; and they must take the consequences if they are

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deceived. A solicitor, however, who takes proceedings on the faith of a retainer, derived through a power which turns out to be forged, does so at his peril, and is liable to pay costs to parties affected by such proceedings: *Doe* d. *Davies* v. *Eyton*, 3 B. & Ad. 785.

Alteration of instrument.

It has been held that a power to "—— Ree of Ware" was not invalidated by the person, intended to be the attorney, filling up the blank with his christian name: *Eagleton* v. *Gutteridge*, 11 M. & W. 465. And it would no doubt be held that filling in the date, after execution, is not such an alteration as will avoid the instrument: *Keane* v. *Smallbone*, 17 C. B. 179, a case of warrant of attorney. If the witness's affidavit has been altered, it will not be filed without proof that the alteration was made before it was sworn: *Gill* v. *Gilbard*, 9 Ha. App. xvi.

Loss of instrument.

Where a power of attorney has been lost, and secondary evidence is given of its contents, it is for the judge and not for the jury, to construe its meaning from such evidence: *Berwick* v. *Horsfall*, 4 Jur. (N. S.) 615.

Dividends of proceeds of land compulsorily taken.

A public company may be liable to pay the expense of a power of attorney to receive the dividends of invested purchase-money of lands compulsorily taken: *Ex parte Incumbent of Guilden Sutton*, 2 Jur. (N. S.) 793; *S. C.*, 27 L. T. 163.

Stat. 44 & 45 Vict. c. 41, s. 48.

The Conveyancing and Law of Property Act, 1881, contains provisions intended to remedy the inconvenience which often arises when a general power is given owing to the difficulty in obtaining its production for the benefit of persons interested in the due exercise of the power.

By sect. 48 of that Act it is enacted—

Deposit of original instruments creating powers of attorney.

"(1.) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the Central Office of the Supreme Court of Judicature.

"(2.) A separate file of instruments so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and an office copy thereof shall be delivered out to him on request.

"(3.) A copy of an instrument so deposited may be presented

at the office, and may be stamped or marked as an office copy, and when so stamped or marked shall become and be an office copy.

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"(4.) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the Central Office.

"(5.) General rules may be made for purposes of this section, regulating the practice of the Central Office, and prescribing, with the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein.

"(6.) This section applies to instruments creating powers of attorney executed either before or after the commencement of this Act."

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Implication of authority to do incidental acts.

Where the power authorises the attorney to do a certain act, it implies an authority to do whatever is incident to that act: see *Bayley* v. *Wilkins*, 7 C. B. 886; *Collen* v. *Gardiner*, 21 Beav. 540; *Sickens* v. *Irving*, 7 C. B. (N. S.) 171. Thus, a power to contract for obtaining a grant of certain mines, being an authority to purchase them, impliedly authorises the attorney to raise money for the completion of such purchase: *Withington* v. *Herring*, 3 Moo. & P. 30. So, if an agent have authority to subscribe a policy, he may also adjust it: *Richardson* v. *Anderson*, 1 Camp. 44, n. If a principal, being indorsee of a bill, empower an agent to get it discounted, the latter may warrant it to be a good bill: *Fenn* v. *Harrison*, 4 T. R. 177. And where the attorney is authorised to demand, receive and recover a debt, he may receive payment in any way he may think fit: *Barker* v. *Greenwood*, 2 Y. & C. 414 (*o*). And even where there is a general power to act for the principal in legal proceedings, objections to a reference, on the ground that the attorney's consent was beyond his authority, have generally been regarded with disfavour by the Courts: *Bodington* v.

(*o*) Under certain circumstances this may be done even by way of set-off between the attorney and the debtor, *ibid.* But see *Young* v. *White*, 7 Beav. 506.

A public attorney may direct the sheriff to seize under a writ of execution, and such direction binds the client: *Jarmain* v. *Hooper*, 1 Dowl. & L. 769.

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General powers.

Binns, 1 Bing. 187; *Buckle* v. *Rooch*, 1 Chit. 193; see *Jamieson* v. *Binns*, 4 A. & E. 945. So, in the case of general powers. A power to take charge of the principal's interest in a particular place, and act as his representative, has been held to authorise the attorney to dismiss the captain of one of the principal's ships: *Berwick* v. *Horsfall*, 4 Jur. (N. S.) 615. A power to sell goods includes a power to receive payment on the sale: *Capel* v. *Thornton*, 3 C. & P. 352 (*p*). If the attorney be authorised to underwrite and settle losses, he may refer to arbitration a dispute about a loss: *Goodson* v. *Brooke*, 4 Camp. 163. So, where a partner gave his son power to act on his behalf in dissolving the partnership, with authority to appoint any other person as he might see fit, this entitled the son to submit the accounts to arbitration: *Henley* v. *Soper*, 8 B. & C. 16. So, a power to an assignee of a business to take proceedings to enforce an existing contract, and otherwise to deal in respect thereof as he should think proper, will authorise him to refer all matters arising out of the contract: *Hancock* v. *Reid*, 2 L. M. & P. 584. A power to a land agent to manage and superintend estates authorises him on behalf of his principal to enter into agreements for the usual leases: *Peers* v. *Sneyd*, 17 Beav. 151. But see *Collen* v. *Gardner*, 21 Beav. 540; *Ley* v. *Peter*, 3 H. & N. 101; *Ridgway* v. *Wharton*, 3 De G. M. & G. 677; *Turner* v. *Hutchinson*, 2 F. & F. 185 (*q*). And a person empowered to manage a mine, though he may not borrow monies, is authorised to incur debts for wages and goods necessary for carrying it on: *Ex parte Chippendale*, 4 De G. M. & G. 19; *Hawken* v. *Bourne*, 8 M. & W. 703. See *Hawtayne* v.

(*p*) Otherwise as to realty: *Mynn* v. *Jolliffe*, 1 Moo. & R. 326, *per Littledale*, J. Such a power has also been held to authorise a warranty: *Woodin* v. *Burford*, 2 C. & M. 391, *per Bayley*, B. But now see *Brady* v. *Tod*, 9 W. R. 483. Authority to deliver does not imply authority to warrant: *Woodin* v. *Burford*, *supra*.

(*q*) A power from A., B. & C. to manage an estate will of course not authorise the attorney to grant a lease in the names of A., B., C. and D., the co-tenants of the estate, although the power was given to enable him to act in concurrence with D.: *Rossiter* v. *Walsh*, 4 Dr. & W. 485.

Bourne, 7 M. & W. 595. And it is clear that under a general power to act for the principal in his absence, the attorney may instruct a solicitor to appear on behalf of the constituent, and resist an adjudication of bankruptcy against him: *Ex parte Frampton,* 1 De G. F. & J. 263. Under a general power to receive and invest money, the attorney may waive the usual stipulation for the re-purchase of an annuity to his principal, on giving six months' notice, and accept the redemption money: *Webber* v. *Granville,* 7 Jur. (N. S.) 420. And it has even been held that a power to transact the affairs of a testator in the name of the executor *as such*, and to satisfy debts due from the testator, authorised the attorney to accept a bill for the amount of one of such debts, so as to make the executor personally liable: *Howard* v. *Baillie,* 2 H. Bl. 618; but see *Gardiner* v. *Baillie,* 6 T. R. 591.

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But the last-mentioned decision cannot possibly be supported. The attorney cannot bind his principal by any act beyond the scope of his authority: *Fenn* v. *Harrison,* 3 T. R. 757; and the power is to be construed strictly: *Attwood* v. *Munnings,* 7 B. & C. 278; *Harper* v. *Godsell,* L. R. 5 Q. B. 422. Thus a power to indorse bills remitted to the principal does not authorise indorsement of bills remitted to him conditionally: *Fearn* v. *Filica,* 8 Scott (N. R.) 241. Where the resident managing director of a mine was authorised by deed to provide needful implements, materials and machinery, he was not entitled to bind the company by accepting bills: *Brown* v. *Byers,* 16 M. & W. 252. If the principal be an allottee of shares in a completely registered joint-stock company, his attorney to receive shares or stock consolidated or in scrip is not authorised to execute the deed of settlement in respect of such shares: *Ex parte Neilson,* 3 De G. M. & G. 556. Under a power to sell, assign or transfer certain shares or securities, the attorney cannot pledge them: *De Bouchout* v. *Goldsmid,* 5 Ves. 210; *Navulshaw* v. *Brownrigg,* 2 D. M. & G. 452; *Jonmenjoy Coondoo* v. *Watson,* 9 App. Ca. 561; nor barter them: *Guerreiro* v. *Peile,* 3 B. & Al. 616; nor sell

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them on credit: *Wiltshire* v. *Sims*, 1 Camp. 258. In the absence of usage, a mere power to sell or to buy means a sale or a purchase (as the case may be) for ready money: Story, Agency, s. 77. An authority to proceed for a certain debt did not authorise the attorney to oppose the debtor's discharge under the Insolvent Acts: *Drake* v. *Lewin*, 4 Tyr. 730. Nor, under a power for a co-partner, and on his behalf, to pay and accept bills to be drawn or charged upon him by his agents or correspondents, is the attorney authorised to accept bills drawn on the principal to raise money to discharge joint debts owing by the firm: *Attwood* v. *Munnings*, 7 B. & C. 278. So a power given to a co-partner for the purpose of exercising for the principal "all or any of the powers and privileges conferred by an indenture of partnership constituting the firm," and containing the general words "and generally to do, execute, and perform any other act, deed, matter, or thing whatsoever, in or about my concerns, engagements, or business of every nature and kind whatsoever," was held not to authorise the attorney to dissolve the partnership and assign over the principal's share of the partnership property: *Harper* v. *Godsell*, L. R. 5 Q. B. 422. And it seems doubtful whether an agent empowered to let a house has an implied authority to let persons into possession: *Slacke* v. *Crewe*, 2 F. & F. 59.

Power to indorse not implied.

Again, it has often been decided that power to receive monies and give discharges does not authorise the attorney to indorse in his principal's name bills received in payment. Thus, in *Kilgour* v. *Finlyson*, 1 H. Bl. 155, on the dissolution of a partnership between F., B. and C., a power was given to F. to receive and discharge all debts owing to and by the firm. F. drew a bill on one of the debtors of the partnership, and afterwards, in the names of himself, B. & C., indorsed it to the plaintiff, who discounted it. It was held that the indorsee could not sustain an action against F. and his partners, F. not being authorised to indorse the bill; and the application of the proceeds to pay a partnership debt did not enable the plaintiff to recover for money paid to the

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use of the defendants. So in *Murray* v. *The East India Co.*, 5 B. & Al. 204, under a power authorising receipt of all sums due to the principal upon any bill, &c., the attorney was held not entitled to indorse bills, and the defendants, who had paid bills to persons to whom he had indorsed them, had to pay the amount again to the principal's administrator. And as parol evidence is inadmissible to alter the operation of a written instrument, in a case where the power was to receive all salary and money due to the principal, evidence of usage at the Navy Office to pay bills indorsed by the attorney in his own name, and negotiated by him under such a power, could not be received to enlarge its operation: *Hogg* v. *Snaith*, 1 Taunt. 347; see *Ekins* v. *Macklish*, Ambl. 184; *Maclish* v. *Ekins*, Sayer, 73; *S. C.*, nom. *M'Lynch* v. *Ekins*, 13 East, 515. See, however, *Tonkin* v. *Fuller*, 3 Dougl. 300. It seems, also, that an attorney appointed to collect assets abroad has no right to remit the proceeds to his correspondents in England: *Wolfe* v. *Findlay*, 6 Ha. 66.

Notwithstanding this strictness, it has been held that a power to sell, indorse and assign is a power to sell, a power to indorse, and a power to assign: *The Bank of Bengal* v. *Macleod*; *The Bank of Bengal* v. *Fagan*, 7 Moo. P. C. 35, 61, see p. 74. A power to assign any bottomry bond or instrument of hypothecation of a particular vessel or her cargo, and to sell or mortgage the vessel, authorises the assignment of her passage-money: *Willis* v. *Palmer*, 7 C. B. (N. S.) 340, 358. And in one case, when it was doubtful whether the principal was bound by the attorney's act, the Court seemed to think that the principal's conduct might raise an implication of a special authority to do the act in question: *Howard* v. *Baillie*, 2 H. Bl. 623. But an implied authority can hardly have place where there is an express authority in writing: Paley, Princ. & Ag. 179, note 5.

Where execution upon a judgment against a limited company has issued with return of *nulla bona*, the assignee of the judgment, with a power of attorney, may petition to wind up the company: *Re*

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London and Birmingham Flint Glass, &c., Co., 1 De G. F. & J. 257.

General words.

The general words often thrown in at the end of a power of attorney are construed with reference to its principal purpose, and will not confer authority unnecessary to effectuate such purpose: *Esdaile* v. *La Nauze*, 1 Y. & C. 394; *Perry* v. *Hall*, 29 L. J. Ch. 677; *Harper* v. *Godsell*, L. R. 5 Q. B. 422; *Danby* v. *Coutts*, W. N. 1885, p. 46. Thus when the attorney was given powers as to the management of certain estates of the principal's, and, in conclusion, was authorised to do all lawful acts concerning that principal's "business and affairs of what nature or kind soever," it was held that he could not indorse a bill in the name of the latter: *Ibid.* Nor under a power to demand and recover monies, "and to do all other business," can the attorney indorse a bill for his principal which comes to him under the power: *Hay* v. *Goldsmid*, 2 Smith, 79. So a power to pay and receive money, buy and sell lands, bring and defend actions, give and take releases, indorse and negotiate bills payable to the principal, and generally to perform all his other affairs and concerns, does not authorise the acceptance of bills drawn upon the constituent: *Attwood* v. *Munnings*, 7 B. & C. 278. In *Perry* v. *Hall*, 6 Jur. (N. S.) 661; *S. C.*, 8 W. R. 578, however, Lord *Campbell*, C., approving of the doctrine that general words, following a power to do a particular act, are not to be extended beyond what is necessary for doing such act, appeared to think, that under a power to manage the whole of the principal's concerns during his absence from England, followed by powers to receive rents and salary, to repair, to sell and exchange realty, and for any of these purposes to act as effectually as the principal could have done, the attorney was authorised to mortgage a policy of insurance. The power here was unusually large. It resembled that given by Sir Philip Sidney to Sir Thomas Walsingham (*r*). Civilians

(*r*) See 1 Salk. 96, *per Holt* J.

would have called it a mandate *cum liberâ administratione.*

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A common power of attorney does not enable the mandatory to assign—*delegatus non potest delegare: Tonkin* v. *Fuller,* 3 Doug. 302, *per* Lord *Mansfield.* But of course he may delegate if the principal expressly assent thereto: *Cobs* v. *Tregothick,* 9 Ves. 234; or if the instrument expressly authorise him to appoint a substitute: *Palliser* v. *Ord,* Bunb. 166 (*s*). Even without such authorisation it has been held that where the power is of such a nature as to require execution by deputy, the original attorney may create a delegate: *Quebec and Richmond Rail. Co.* v. *Quinn,* 12 Moo. P. C. C. 232; see *Rossiter* v. *The Trafalgar Life Assurance Association,* 27 Beav. 377 (*t*). So it has been decided that, by usage, a power to the attorney, his substitutes and assigns to receive money due on victualling bills, enables him to appoint a substitute: *Tonkin* v. *Fuller,* 3 Doug. 300. And where an agent is authorised to indorse his principal's name on a bill of exchange, he may do so by the instrumentality of a third party: *Lord* v. *Hall,* 2 C. & K. 698. Here no discretion was delegated. Had the principal, as *Williams,* J., observed, attached the signature by means of a machine, no objection could have been raised; and there was no difference between an inanimate machine and a living one. Where the rule against delegation applies, the principal may, of course, make himself liable by afterwards confirming the act of the sub-attorney: see *Blose* v. *Sutton,* 3 Mer. 246; *Soames* v. *Spencer,* 1 D. & R. 32.

Delegation of power.

(*s*) See Story, Agency, sect. 14. In *Eagleton* v. *Gutteridge,* 11 M. & W. 465, it was contended (of course vainly) that an attorney to distrain, with express power to delegate (see the report in 12 L. J., Ex. 359, 361), could not appoint another to make the distress.

(*t*) A solicitor authorised to institute a suit may employ a London agent to do so (*Solley* v. *Wood,* 16 Beav. 370). The agent must appear in the pleadings to be acting as such: *Ibid.* p. 371.

5. The Exercise of the Power.

Attorney must follow principal's directions.

Though a general power is construed according to the subject matter and the general purposes for which it is given (see *Withington* v. *Herring*, 3 Moo. & P. 55), in all cases of special or limited powers, the attorney is strictly bound by his authority: *Sickens* v. *Irving*, 7 C. B. (N. S.) 165, and must follow his principal's directions, express or implied: see Chance, Powers, § 1218. Thus, a power to sell by auction will not authorise a sale by private contract: *Daniell* v. *Adams*, Ambl. 496; nor would a power to sell in market overt entitle the attorney to sell elsewhere: *Metcalfe* v. *Lumsden*, 1 Car. & K. 309. So an attorney to surrender a copyhold must pursue the manner and form of the surrender in all points according to the custom as his principal ought to have done: *Combes' Case*, 9 Rep. 76 b.

Where there are more attornies than one.

If a power be given to two or more persons, the principal is bound only when all concur in its exercise, even though one or more die or refuse to act; Co. Litt. 181 b; *Brown* v. *Andrew*, 13 Jur. 938; 18 L. J., Q. B. 153. So if a power be given to three, jointly or severally, and two only act, this is bad, for the delegation was to all three or to each separately: Co. Litt. 181 b: 3 Bac. Abr. 7th ed. 612; *Parker* v. *Kett*, 1 Salk. 96. But the principle of these last cases will not be extended. And where a power was given to fifteen persons jointly and separately for the principal, and in his name to sign and order all such policies as they or any of them should jointly and separately think proper, a policy executed by four of the fifteen was held to bind the principal: *Guthrie* v. *Armstrong*, 5 B. & Al. 628. Such questions are precluded by all well-drawn instruments. In these the power is made exerciseable by the attornies, or any one or more of them; or, if there be only two attornies, then by them, or either of them.

Exceeding the authority.

If the power be to do a certain act conditionally, and the attorney do it absolutely, the act is void: Co. Litt. 258 a: but see *Neeld* v. *Duke of Beaufort*, 5 Jur. 1123. But, conversely, if the power be to do

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an act absolutely, and the attorney do it conditionally, the act will be good, and the unauthorised condition void: 1 Bac. Ab. 7th ed. 435 (*u*). So in all cases where the attorney exceeds his authority, the excess alone is a nullity: see Perk. § 189. If, for example, three-eighths of certain copyholds are surrendered by attorney, the principal being entitled only to one-fourth, the admittance will be cut down to the limits of the surrender really authorised: *Carter* v. *Carter*, 3 K. & J. 617. Immaterial variation from the power will not avoid the act: see 1 Salk. 96, per *Holt*, J. Thus an agent appointed to load a cargo at a foreign port may vary the mode of performance if any exigency arises, provided the contract be substantially performed: *Sickens* v. *Irving*, 7 C. B. (N. S.) 171. And even in case of material variation, the principal may preclude himself from saying that what had been done was done without his authority: *Perry* v. *Holl*, 6 Jur. (N. S.) 661.

Variation from the power.

No one can take upon himself at the same time two incompatible duties or characters. Thus an attorney appointed to buy cannot purchase property belonging to himself: *Massey* v. *Davies*, 2 Ves. Jun. 317; *Bentley* v. *Craven*, 18 Beav. 75. And so if the principal direct him to sell he cannot become the buyer: *Lowther* v. *Lowther*, 13 Ves. 103; *Crome* v. *Ballard*, 3 B. C. C. 117; see Paley, 33—38. But such purchase or sale (as the case may be) may be valid if made with the principal's knowledge and consent. In all such cases the principal may either repudiate the transaction altogether or adopt and take the benefit of it.

Under an authority to sell certain property, part may be sold at one time and part at another: Com. Dig. *Attorney*, C. 15. So under a power to make livery, the attorney may make livery for part at one time, and for other part at another time: Sir F.

Time of exercise.

(*u*) See Perk. sects. 189, 192. Coke says, doubtfully, "some hold that if the warrant be absolute, and he (the attorney) delivereth seisin upon condition, the liverie is void:" Co. Litt. 258 a, 258 b.

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Moore, 280, per *Anderson*, C. J. And where the power was to deliver seisin according to the form and effect of the deed, the power was well exercised after the date of the deed: *Roe* dem. *Heale* v. *Rashleigh*, 3 B. & Al. 156.

The attorney's execution of a deed.

Execution of Deeds, &c., by Attorney.]—Formerly in executing a deed pursuant to the power, the attorney, unless the authority be coupled with an interest, must have signed, sealed, and delivered in the name of his principal. And it is still usual for the attorney to sign in his principal's name, thus "A. B. [*the principal*], by his attorney, C. D." (*w*). But such execution of a deed is no longer essential to its validity, for by the Conveyancing and Law of Property Act, 1881, sect. 46, it is enacted as follows:

Execution under power of attorney.

"(1.) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

"(2.) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act."

Wherever an interest is intended to pass, it will be proper, though apparently not strictly necessary, that it should in terms be conveyed by the principal: Paley, Princ. & Ag. 182. So an attorney's submission to an award (*Bacon* v. *Dubarry*, 1 Lord Raym. 246),

(*w*) No particular form of words is necessary: see *Wilks* v. *Back*, 2 East, 142, where opposite the seal was written "for J. B." [*the principal*], "M. W." [*the attorney*].

In delivering the deed, the attorney should take it up and say, "I deliver this as the act and deed of the within-named [*principal*]."

Where the attorney signs with his own name and seals with his own seal, it will be convenient, though not strictly necessary, that the signature and sealing should be expressed to be "as the attorney of" or "by the authority and on behalf of" the principal, or words to that effect: see *Laurie* v. *Lees*, 7 App. Ca. at p. 28.

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or release upon a composition (*D'Abridgcourt* v. *Ashley*, Moo. 818), should be made in the principal's name.

An attorney with a general authority to receive payments may, without collusion, receive them in any way warranted by the course of trade: Paley, P. & A. 290, citing *Thorold* v. *Smith*, 11 Mod. 71, 87. And where a debt is demanded under the power, the instrument need not be produced unless the debtor so require: *Roe* d. *West* v. *Davis*, 7 East, 363.

Miscellaneous points of pleading and practice.

We may conclude this section by mentioning a few miscellaneous points of pleading and practice, which have arisen where the attorney has exercised or sought to exercise the power.

The assignor, or if he be dead, his legal personal representative, of a legal chose in action was formerly in all cases a necessary party to an action or suit by the assignee respecting it, though a power of attorney to sue be contained in the assignment: *Brown* v. *Harrington*, 2 Atk. 235; *Partington* v. *Bailey*, 6 L. J. (N. S.) Ch. 179; see *Crossley* v. *City of Glasgow Life Ass. Co.*, 4 Ch. D. 421. But now by sect. 25 (6) of the Judicature Act, 1873 (36 & 37 Vict. c. 66) it is enacted that:

Assignment of debts and choses in action.

"Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, without the concurrence of the assignor."

In the case of an assignment of an equitable interest in a chose in action, no power of attorney is necessary, and the assignee may sue in respect of such interest without bringing the assignor before the court: *Cator* v. *Croydon Canal Co.*, 4 Y. & C. Ex.

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405; *Padwick* v. *Platt*, 11 Beav. 503; *Fulham* v. *M'Carthy*, 1 H. L. C. 703.

Service of a subpœna to appear and answer on an attorney having a *special* power touching the matter in dispute will be good service on the principal: *Hobhouse* v. *Courtney*, 12 Sim. 140; *Bromley* v. *Bank of England*, 7 Jur. 120; and see *Murray* v. *Vipart*, 1 Phill. 521; *Hallett* v. *Sutton*, 12 Sim. 145; *Carter* v. *De Bruyn*, *ibid.* 146; *Hyde* v. *Foster*, *ibid.* 147; *Geledneki* v. *Charnock*, *ibid.* 148; *Smith* v. *Hibernian Mining Company*, 1 Sch. & L. 238; *English* v. *Hendrick*, Madd. & G. 205; *Weymouth* v. *Lambert*, 3 Beav. 333; but see *Rickord* v. *Nedriff*, 2 Mer. 458. Not so in a creditor's suit, where the principal was an executrix residing abroad, and the attorney was receiving the assets under a general power: *Ravenhill* v. *Arundell*, 4 L. J. (N. S.) Ch. 194. He should have been made a party. If a bill of sale be proved to have been executed by the undersheriff in the name of the sheriff, it is unnecessary to prove the power enabling the former to assign the property in the latter's name: *Wood* v. *Rowcliffe*, 11 Jur. 707. It seems doubtful whether the court will decree specific performance of a contract, where the execution by a necessary party can only be procured under a power of attorney. Of course, however, such a doubt will not arise if there be an express stipulation on the subject, or conduct amounting to a waiver of the objection: *Duke of Beaufort* v. *Glynn*, 3 Sm. & G. 213. A final judgment pronounced in an action in which an attorney is plaintiff is a bar to an action for the same object, in which his principal is plaintiff: *Ostell* v. *Lapage*, 2 De G. M. & G. 892.

Arbitrations.

The affidavit of the execution of a power of attorney to demand the performance of an award in a cause referred should be entitled in the cause: *Doe* d. *Clarke* v. *Stilwell*, 6 Dowl. P. C. 305. When demand is made under a power of attorney, for payment of money pursuant to an award (see *ante*, p. 858), it is enough to found a rule for an attachment if the attorney swears to the demand and refusal, and that the money is unpaid.

Costs.

Costs which by the rule are payable to a high-

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sheriff may be well demanded under a power of attorney executed by the undersheriff after the former has gone out of office: *Reg.* v. *Mattey*, 6 Dowl. P. C. 575. It has also been held that a demand to inspect the rolls of a manor cannot be made by the delegate of the attorney, so as to enable the latter to obtain a mandamus in case of refusal, unless of course the delegate has been appointed under an authority in that behalf: *Ex parte Hutt*, 7 Dowl. P. C. 690.

Inspection of Court Rolls.

Administration.

When the power is to take out administration for the use and benefit of the principal, the grant will follow its terms, and the attorney cannot obtain a special grant: *In the goods of Goldsborough*, 1 Swab. & T. 295. In one case, however, where administration *cum testamento* was granted to the general attorney of the surviving executor, it was limited until such time as the principal should apply for probate, or his (special) attorney for administration with the will annexed: *In the goods of Lewis*, 29 L. J. Pr. 94.

Bankruptcy.

In bankruptcy the consent of a creditor who is abroad may be given by power of attorney, but an attested copy of the power should be filed with the proceedings: *Ex parte Hamilton*, 2 D. & C. 139. But a general power will not authorise the giving of such consent: *Re Sampson*, 3 D. & C. 198. Where a power was given by several creditors residing abroad to sign their consent to the annulling of a *fiat*, this was held sufficient, and a separate power from each creditor was not required: *Anon.*, 3 Deac. 377.

6. The Rights and Liabilities of the Principal and the Attorney.

Some points relating to the rights and liabilities of the principal have already been necessarily noticed. Few have arisen, or are likely to arise, as the nature of the formal instruments under consideration generally excludes the possibility of questions as to the principal's position, in reference either to the attorney or to the third persons. Points relating, for instance, to the liability of an unnamed principal when dis-

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covered, cannot occur when, as usual, the party dealing with the attorney sees the instrument. So, too, as the party dealing with the attorney can inform himself of the limitations of the attorney's authority contained in the instrument, questions as to the extent of the principal's liability can scarcely arise. It may, however, here be noted, that a power to borrow money on mortgage, though deficient in the necessary formalities, may bind the principal as to monies actually received by his attorney: *Denyssen* v. *Botha*, 8 W. R. 710; 2 L. T. (N. S.) 126. But, where a Liverpool firm sent out an agent to America, with authority to draw bills on the firm, and sell and discount them, which he did, and the firm stopped payment before one of the bills arrived in England, it was held that no proof could be made by the indorsee for value, as the authority only bound the principals as drawees, and not as implied acceptors: *Ex parte Bolton, In re Bentley*, 3 Mont. & A. 367; 2 Deac. 537. Nor is a managing director, represented by proxy at a meeting of directors, bound by a resolution at the meeting authorising the resident director to accept bills for the company: *Brown* v. *Byers*, 16 M. & W. 252. And when an attorney to sell sells fraudulently, the fraud vitiates the purchaser's title, if it was known to him, or could have been known by reasonable inquiry: *The Margaret Mitchell*, Swab. 382. Formerly, the execution of an indenture by an attorney must have been in the name of the principal in order to bind him: *Berkeley* v. *Hardy*, 8 D. & R. 102; but see *ante*, p. 884.

Principal bound as to monies received under imperfect power to borrow.

Principal bound as drawee, not as implied acceptor.

Fraudulent sale.

Execution of indenture by attorney in his own name.

Rights of attorney against his principal.

As to the Rights of the Attorney.]—It is laid down in other systems of jurisprudence, that the principal cannot effectually revoke the power without providing for the responsibilities which the attorney has personally undertaken in exercise of the mandate: 3 Burge, Comm. 988, citing Dig. lib. 3, tit. 3, l. 27, Pr.; Code Civil, art. 2009; 1 Bell's Com. 489; Erskine, b. 3, tit. 3, § 40. In England, however, in such a case, it would seem that the power might well be revoked, but the attorney would have his remedy by action against the principal. In equity,

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under the former practice, an attorney to institute a suit could not petition to discharge an order embodying an arrangement between the principal and defendant for the stay of proceedings: *Pentland* v. *Quarrington*, 3 My. & C. 249. If the attorney, like the Roman *mandatarius*, does his work gratuitously, it has been held that he would have no remedy against his principal if the power were suddenly revoked. *Quære*, too, whether the maxim *causa proxima, non remota, spectatur*, would not apply to a case put by Mr. Colquhoun in his *Summary of Roman Civil Law*, III. 87,—the case of an attorney receiving the rents of a high and locally influential nobleman gratuitously, in consideration of the importance which the trust known to be reposed in him by that particular individual would give him, and of the mandate being suddenly withdrawn. Under any circumstances the attorney may compel his principal to indemnify him for expenses or damages incurred or sustained in execution of the power.

Rights of attorney against third parties.

If an attorney to sell have a possession coupled with an interest in the subject-matter of the power, he may sue in his own name any party with whom he may have contracted: *Williams* v. *Millington*, 1 H. Bl. 81, the case of an auctioneer. So any attorney may sue upon contracts made with him, in his own name, for an undiscovered principal.

Possession of the instrument.

The power of attorney is the instrument of the attorney to whom it is given, and he is to keep it, and under it to show that he has authority for what he has done: *Hibberd* v. *Knight*, 2 Exch. 12. And a person paying money to the donee, and thereby exhausting the power, is not entitled to the possession of the instrument: *Pridmore* v. *Harrison*, 1 C. & K. 613. But after revocation, it seems that the principal may demand it back, for otherwise the attorney, by showing the instrument to a third party without notice of the revocation, and by dealing with him, might bind his principal: see Story, Agency, 4th ed. § 470.

The attorney's

As to the Attorney's Liabilities to his Principal.]—

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liability to his principal.

If the attorney be a mandatory, acting gratuitously, he would not be liable for nonfeasance, as there is no consideration. He would, however, be liable for the injury done in case of *mis*feasance, and gross negligence: Burge, Comm. III. 984; and see *Zwilchenbart* v. *Alexander*, 9 W. R. 671, where *Pollock*, C. B., said that a remuneration may not be necessary to raise a duty to exercise requisite care and diligence. If he be a paid attorney, he is bound to use reasonable care in the exercise of his power: see *Hayes* v. *Tindall*, 4 L. T. (N. S.) 403, when it was held by the Q. B., that a house-agent charging commission to the landlord for letting is bound to use reasonable care in ascertaining the tenant's solvency. In the words of Mr. Justice Story, "he must use reasonable skill and ordinary diligence:" Story, Agency, § 183. If he do not adhere to the terms of his power, and, consequently, incur a loss or obtain an advantage, he must, in the former case, compensate the principal for the loss: see *Catlin* v. *Bell*, 4 Campb. 184; and, in the latter, account to him for the profit: *Barker* v. *Harrison*, 2 Coll. C. C. 546; *Sugden* v. *Crossland*, 3 Sm. & G. 192. In case of a power to sell, a sale after an express or substantial revocation would amount to a breach of trust: *The Margaret Mitchell*, Swab. 382, 400, 401; and see *Clerk* v. *Laurie*, 1 H. & N. 452. And if such a power be given to the attorney only as a security for his acceptance of certain bills, he will be liable if he exercise it without accepting or paying the bills: *Dearie* v. *Henderson*, 13 Jur. 305. If the attorney make payments after notice of the principal's bankruptcy or other event which impliedly revokes his power, he is liable to the principal's representatives or the principal himself, as the case may be: *Vernon* v. *Hankey*, 2 T. R. 113; 3 B. C. C. 313; *Copland* v. *Stein*, 8 T. R. 199. In the case of an attorney-administrator, he is bound to exhibit an inventory, and render an account at the suit of his principal: *Bailey* v. *Bristowe*, 14 Jur. 298. But except in cases of great complexity, a bill for an account will not lie against an ordinary attorney, unless he and his principal have each received and

Attorney-administrator.

paid on behalf of each other: *Phillips* v. *Phillips*, 9 Hare, 471. Where a sub-attorney has been appointed under an express power in that behalf, an action for an account will not lie against both the original and the sub-attorney: *Lockwood* v. *Abdy*, 9 Jur. 267; unless, of course, a case of fraud be made out against them both. And where the principal filed such a bill, praying also a delivery of documents admittedly in the possession of the sub-attorney, the Court refused to enforce production: *Adams* v. *Fisher*, 3 My. & C. 526 (*x*).

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Substitute.

As to the Attorney's Liability to Third Persons.]— If he bid for an estate more than he was empowered to do, he would himself be liable to the vendor for the whole sum bid: *Daniel* v. *Adams*, Ambl. 498; but *semble*, he could compel his principal to take the estate at the price authorised: Story, Agency, § 172; and see Pothier, Traité du Contrat de Mandat, § 78. If without authority to bind the principal in that respect, he undertake to pay (*Johnson* v. *Ogilby*, 3 P. W. 279; see *Jones* v. *Downman*, 4 Q. B. 235, n.) or borrow (1 Eq. Ca. Ab. 308, *in marg.*) money, he alone is liable. If, however, the attorney had originally authority, which is determined by the principal's death or otherwise, the former would not be liable upon contracts entered into by him in his principal's name, if he did not and could not know of the determination: see *Smout* v. *Ilbery*, 10 M. & W. 1; and the note to *Thomson* v. *Davenport*, 2 Smith's L. C. In such a case no one would be liable; neither the principal, nor, if he be dead, his personal representative (*Blades* v. *Free*, 9 B. & C. 167), nor the attorney. If the principal be a foreigner residing abroad, there is no general rule that the attorney is personally liable on a contract entered into pursuant to his power: *Green* v. *Kopke*, 18 C. B. 549 (*y*). It is always a question of inten-

The attorney's liability to third persons.

(*x*) In this case the sub-attorney by his answer denied all connection with the plaintiff and all privity between them.

(*y*) In *Deslandes* v. *Gregory*, 30 L. J., Q. B. 36, the agents of a single foreign principal signed as agents to him "merchants and

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tion to be gathered from the terms of the contract. If the principal be a trustee, an attorney may be answerable to the *cestui que trust* for a breach by himself or his co-attorney. Thus, where three trustees, A., B. and C., gave a banking-firm, consisting of D., E. and F., a letter of attorney, authorising them jointly and severally to receive dividends, and to sell the capital stock; D. was held liable for a clandestine sale by E., though this took place after the deaths of C. and F.: *Sadler* v. *Lee*, 6 Beav. 324 (*z*). So, where the principal is an executor or administrator, or in fact holds any fiduciary position, the attorney will be answerable for any misapplication of the trust estate to which he may be a party: *Langford* v. *Mahony*, 4 Dr. & W. 81; and see *Wilson* v. *Moore*, 1 My. & K. 126. If he execute an instrument as principal, he may be personally liable, though he be described therein as covenanting for and on behalf of his principal: *Appleton* v. *Binks*, 5 East, 148; and see *Kendray* v. *Hodgson*, 5 Esp. 228; *Wake* v. *Harrop*, 9 W. R. 788.

Where attorney executes as principal.

Attorney-administrator.

He to whom letters of administration have been granted, as the attorney of the person entitled, and for his use and benefit, becomes in fact the administrator. He may, accordingly, be sued in respect of the estate by the parties beneficially interested, as if he had obtained administration in his own right: *Chambers* v. *Bicknell*, 2 Ha. 536; *Anstruther* v. *Chalmer*, 2 Sim. 1; *Edgar* v. *Reynolds*, 4 Jur. N. S. 339 (*a*). But as regards the chain of representation, the grant to the attorney is considered the same as a grant to his principal: *In the goods of Bayard*, 13 Jur. 664. Where administration is granted to A., as attorney for B., limited to receive

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charterers" (in the plural). It was, nevertheless, held that they were not liable.

(*z*) Every agent, not merely acting ministerially (*Grimes* v. *Harrison*, 26 Beav. 435), who assists in a breach of trust, is personally responsible: *Att.-Gen.* v. *Corporation of Leicester*, 7 Beav. 176. The *cestui que trust* suing in respect of such breach may or may not make him a defendant: *Bateman* v. *Margerison*, 6 Ha. 499.

(*a*) See *Murray* v. *M'Inerheny*, 1 Curt. 576, as to the liability of an administrator-attorney's sureties.

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a sum until B. should obtain administration to the deceased, A. on receiving the sum may safely pay it over to B., though the latter have not obtained the letters: *De la Viesca* v. *Lubbock*, 10 Sim. 629. If administration with the will annexed be granted to the executor's attorney, for the benefit of such executor, the principal's death puts an end to the grant: *Suwercrop* v. *Day*, 8 A. & E. 624. So where administration *durante absentia* has been granted to an attorney, though he can make title to a leasehold, the purchaser is not bound to accept it, (unless the power of attorney is expressed to be irrevocable: see *post*, p. 903) as the principal might have been dead at the date of the contract: *Webb* v. *Kirby*, 7 De G. M. & G. 376; see *Mitchel* v. *Neale*, 2 Ves. 679; *Richards* v. *Barton*, 1 Esp. 268, 269; *Noel* v. *Weston*, 6 Madd. 50.

Cannot enforce acceptance of conveyance.

False assumption of character of attorney.

We may conclude this section by noting that an action will lie against a person falsely representing himself to be an attorney: *Pothill* v. *Walter*, 3 B. & Ad. 114; *Sainsbury* v. *Jones*, 2 Beav. 462. If he knows that he has no authority, and makes the representation to the plaintiff with a view of inducing him to act upon it, and the latter does so act and sustains damage in consequence, the action may be one in the nature of deceit: *Behn* v. *Kemble*, 7 C. B. N. S. 260; *Oxenham* v. *Smythe*, 2 F. & F. 220, 225. If his character be assumed *bonâ fide*, an action will lie for breach of the implied contract that the defendant had the alleged authority: *Collen* v. *Wright*, 7 E. & B. 301 (*b*). But in such a case the plaintiff can only recover damages flowing directly from the defendant's misfeasance. Thus where D. alleged that he had authority to contract to grant a lease for seven years to P., who thereupon entered without a deed, and was ejected by the owner, it was held that P. could not recover from D. the costs of defending the action of ejectment: *Pow* v. *Davis*, 9 W. R. 611.

(*b*) If he execute an instrument as attorney, but without authority, he cannot be sued upon the instrument itself: *Jenkins* v. *Hutchinson*, 13 Q. B. 744; *Lewis* v. *Nicholson*, 21 L. J., Q. B. 311.

7. The Determination of the Power.

Determination of the power.

The determination of the power may be brought about in five ways :—1. By mutual agreement. 2. By revocation. 3. By renunciation. 4. By the exhaustion of the power. 5. By the expiration of the time limited for its exercise.

1. By mutual agreement.

Nothing need be said as to the determination of a power by mutual agreement.

2. By revocation.

Next as to its determination by revocation.

Revocation may be either express or implied.

Express revocation.

First, as to express revocation. A power of attorney, like a will, was at common law in its nature revocable, and words purporting to make it not countermandable were simply void: *Vynior's case*, 8 Rep. 82a (*c*). But now such forms may be made irrevocable, whether given for valuable consideration or not: see *post*, p. 903. If given by deed, it should be revoked by deed, though strictly it would seem that, even in such a case, a parol revocation would suffice: *The Margaret Mitchell*, 1 Swab. 382 (*d*). If, however, the attorney have acted under the power so as to involve, legally, the interests of third parties, the countermand is ineffectual as to such acts: see *Chappell* v. *Bray*, 6 H. & N. 145. Thus, authority to receive a debt is revocable before the debt is received, but not after: *Bristow* v. *Taylor*, 2 Stark. 50; *Hodgson* v. *Anderson*, 3 B. & C. 842. And the authority of a broker employed to sell may be countermanded at any time before, but not after, the signature of the memorandum required by the Statute of Frauds: *Farmer* v. *Robinson*, cited 2 Campb. 339, note. So the authority of a broker employed to effect a policy may be revoked at any time before the underwriters have actually subscribed it: *War-*

(*c*) In ordinary cases a power of attorney will not found the jurisdiction to compel the delivery up of instruments: *Bromley* v. *Holland*, 7 Ves. 28.

(*d*) See *Ex parte Burton*, 21 L. J., Ch. 781, where letters from the principal were held not to amount to a revocation, but merely, it would seem, on the ground of the intention not being expressed with sufficient clearness.

wick v. *Slade*, 3 Camp. 127. And if there be two joint principals, the authority is countermandable by either before the intervention of an act precluding revocation: *Bristow* v. *Taylor*, 2 Stark. 50.

The Determination of the Power.

One of two joint principals may revoke.

A letter to the attorney, in which the principal merely says that he has been obliged to have a new power made, and shall not have occasion to trouble him further, does not amount to a revocation, no new power having in fact been executed: *Clerk* v. *Laurie*, 2 H. & N. 199.

Exception where the power is coupled with an interest.

The general revocability of these powers is subject to an important exception where the authority forms part of a security for a debt, or is executed for a valuable consideration: *Bromley* v. *Holland*, 7 Ves. 28; *Abbott* v. *Stratten*, 3 Jo. & Lat. 613; *Smart* v. *Sandars*, 5 C. B. 917. Then the power cannot be *expressly* revoked, unless, of course, the consideration fails: *Ex parte Smither*, 1 Deac. 413; *S. C.*, 3 Mont. & A. 693. Thus, where a power of attorney was made to levy a fine as part of a security, it was held irrevocable: per Lord *Kenyon*, *Walsh* v. *Whitcombe*, 2 Esp. 565. So, where the principal being indebted to the attorney, and his partners, in order to discharge the debt, executed a power authorising the attorney to sell and surrender certain copyholds, this was not a simple authority to sell and surrender the premises, but an authority coupled with an interest, and therefore could not be revoked: *Gaussen* v. *Morton*, 10 B. & C. 731 (*e*). In such cases the power may operate in equity, as an assignment, or a contract to charge the property to which it refers: *Bennett* v. *Cooper*, 9 Beav. 252; *Spooner* v. *Sandilands*, 1 Y. & C. C. C. 390. And the Court would grant an injunction to restrain the principal from executing

(*e*) "What is meant by an authority coupled with an interest being irrevocable is this, that where an agreement is entered into on a sufficient consideration, whereby an authority is given for the purpose of securing some benefit to the donee of the authority, such an authority is irrevocable:" *per Williams*, J., *Clerk* v. *Laurie*, 2 H. & N. 200.

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a power inconsistent with the former one: *Knight* v. *Bulkeley*, 33 L. T. 7.

Implied revocation.

Implied revocation may take place under various circumstances. These may be divided into two classes: first, those in which the principal ceases to have power over the subject-matter; and, secondly, those in which the principal, not parting with his dominion over the subject-matter, does an act, other than an express revocation, inconsistent with the continuance of the power.

Where principal ceases to have power over subject-matter.

Among the cases coming under the first class are those where the principal, by the direct result of his own act, ceases to have power over the subject-matter: *e.g.*, where he sells it; and those in which his own act, or some other circumstance, indirectly causes such cessation. Thus the power would probably be held to be revoked where the principal is a feme sole and marries, unless, it is presumed, the subject-matter of the power be property settled to her separate use: see *Parnham* v. *Hurst*, 8 M. & W. 743 (*f*). Where the principal is a husband giving the power in respect of his wife's estate, and the wife dies: *Wynne* v. *Thomas*, Willes, 503; *Graham* v. *Jackson*, 6 Q. B. 811 (*g*). Where administration is taken out by power of attorney, and the principal afterwards administers: see *Edgar* v. *Reynolds*, 4 Jur. N. S. 399. Where he is an administrator appointed before the finding of the will, and the will is found: *Pond* v. *Underwood*, 2 Ld. Raym. 1210. Where he is the executor of a forged will, and the Court revokes probate; where he is the guardian of an infant, when his ward

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(*f*) Judgment against husband and wife may, with leave of the Court, be entered upon a warrant of the wife given *dum sola*: *Hubbard* v. *Haggard*, 6 Jur. 950; *Staples* v. *Purser*, 3 Moo. & S. 800; *S.C.*, 2 Dowl. P. C. 764. This, though unquestionable law, is opposed by an anonymous case in 1 Salk. 117.

(*g*) In the former case, a *feme coverte*, tenant in tail, wishing to suffer a recovery, had joined her husband in appointing an attorney to appear to the writ of summons, and died before its return. *Willes*, C.J., said, "Whether the warrant [power] of attorney, were revocable or not by Alathea [the *feme coverte*] in her lifetime, it was certainly revoked by her death." The recovery, accordingly, was held erroneous.

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attains majority. As to another case coming under this class, namely, the supervening insanity of the principal, the law does not seem quite settled (*h*). It is submitted, that whenever it is necessary to decide the point, our Courts will hold that transactions effected after such supervention are good as between the lunatic's estate and parties contracting with his attorney, if these parties had no notice of the insanity; and that as between the lunatic's estate and the attorney, such transactions would be good if the latter had no such notice. This proposition is put forward with the more confidence, as it coincides in part with an opinion expressed by Sir Vicary Gibbs, Sir Samuel Romilly, and Mr. Adam (*i*), on a case of *Pollock* v. *Paterson*. These learned persons held that the acts of a party appointed by a general power are effectual to the public against the estate of the principal, notwithstanding his insanity supervening after the execution (*k*).

Supervening insanity of principal.

The most usual instances of implied revocation are, first, when the principal fails; and, secondly, when he dies.

Bankruptcy or insolvency of principal.

On the bankruptcy of the principal, his interest in the subject-matter vests in his trustee. Thereupon the power is revoked: *Parker* v. *Smith*, 16 East, 382; *Dawson* v. *Sexton*, 1 L. J. Ch. 185; *Jolly* v. *Arbuthnot*, 5 Jur. N. S. 80; *Elliott* v. *Turquand*, 7 App. Ca. 79; and money received under the power, after the bankruptcy, may be recovered by the trustee: *Hovill* v. *Lethwaite*, 5 Esp. 158. So, where the manager of a banking company has authority to indorse bills for the business of the bank, the stoppage of the bank appears to revoke the authority: *Alexander* v. *McKenzie*, 18 L. J. C. P. 94.

(*h*) The question whether an attorney can act during his principal's mental incapacity was raised, but not decided, in *The Duke of Beaufort* v. *Glynn*, 3 W. R. 463; 25 L. T. 171; *S.C.*, on appeal, 3 W. R. 502.

(*i*) Afterwards Lord Chief Commissioner of the Scottish Jury Court.

(*k*) See 1 Bell, Comm. on the Law of Scotland, 6th ed. pp. 194, 195.

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But the same principles are applicable here as in the case of an express revocation. Thus there can, of course, be no revocation when the authorized act has been *bonâ fide* done, or essentially done: see *Ex parte Snowball*, L. R. 7 Ch. 534. Accordingly, a power to sell a ship and sign the indorsement on the certificate of registry, was held unrevoked by the vendor's bankruptcy subsequent to the sale, but previous to the indorsement, for the latter was only an act of duty, and passed no interest: *Dixon* v. *Ewart*, 3 Mer. 322; *S. C.*, 2 Buck, 94. And in *The Margaret Mitchell*, Swab. 382 (see p. 399), Dr. *Lushington* seemed to think that a power of attorney to sell a ship was not revoked by a decree of the grantor's insolvency in a consular court, so as to invalidate a *bonâ fide* sale before notice of the insolvency.

Where the power is coupled with an interest, it is clear that it will not be revoked by the principal's bankruptcy: *Winch* v. *Keeley*, 1 T. R. 619; and see *Alley* v. *Hotson*, 4 Camp. 325; or by his marriage: *Parnham* v. *Hurst*, 8 M. & W. 743; or insanity: Story, Agency, § 483.

Secondly, as to the implied revocation resulting from the death of the principal.

Death of the principal.

As a power to represent another can only continue while there is some one to be represented (*l*), the power is generally revoked by the principal's death: *Mitchell* v. *Eades*, Pr. Ch. 125; *Lepard* v. *Vernon*, 2 V. & B. 51; *Wallace* v. *Cook*, 5 Esp. 118(*m*); though the attorney be ignorant of the fact: *Harrison* v. *Asher*, 2 De G. & S. 436; and even (it is said)

(*l*) See 1 Bac. Abr. *Authority* E.

(*m*) *Mitchell* v. *Eades*, Pr. Ch. 125; *Lepard* v. *Vernon*, 2 V. & B. 51; *Wallace* v. *Cook*, 5 Esp. 118. In the case of a power granted by a husband in respect of an estate vested in him in right of his wife, the power would also determine by her death: *Wynne* v. *Thomas*, Willes, 563; *Graham* v. *Jackson*, 6 Q. B. 811. Where a husband applied to an executor to pay under a power of attorney a legacy bequeathed to his wife, the executor was justified in paying it into Court, on the ground that, if at the time of payment the husband had died, the wife's right by survivorship would have accrued: *Re Jones*, 3 Drew. 679. See now 22 & 23 Vict. c. 35, s. 26, cited *infra*.

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though the act authorised is to be done after that event: 13 Vin. Abr. 191, pl. 1; Co. Litt. 52 b (*n*). Accordingly, in the case of powers to receive money out of Court, if the powers are old, the Court, though the sums be small, requires recent evidence of the continued existence of the principals: *Bird* v. *Bird*, 9 Ha. App. xxxi. But, of course, a power given by a corporation aggregate, such as a mayor and commonalty, or a dean and chapter, is not determined by the death of the mayor or dean, unless, perhaps, he be named by his private name: Vin. Abr. 191, pl. 4. Where there are two or more joint principals, the death of one of them will generally revoke the power as to the others: *Gee* v. *Lane*, 15 East, 592; *Raw* v. *Alderson*, 7 Taunt. 453, both cases of warrants of attorney.

Where the power is coupled with an interest.

Even where the power is coupled with an interest, it is clear that the rule as to determination by the principal's death does not hold in equity: *Brasier* v. *Hudson*, 9 Sim. 1; *Spooner* v. *Sandilands*, 1 Y. & C. C. C. 390; *Hatch* v. *Searles*, 2 Sm. & G. 147; *Carter* v. *White*, 20 Ch. D. 228; though the rule did formerly hold at law: see *Watson* v. *King*, 4 Camp. 272.

Power acted on by attorney without notice of principal's death.

Where a power to apply a sum of money in a certain manner has been acted upon by the attorney after the death of the principal, and in a country where it was impossible for him to be aware of that event, a Court of Equity will not undo what has been done: *Hughes* v. *Walmisley*, cit. 12 Jur. 833, n. And in a case before Lord *Kenyon*, where a power was sent out to India, and the attorney, after the principal's death, which happened in England, acted without notice of the death, his Lordship supported the attorney's act: *Ex parte Macdonnell*, Buck, 405. In *Kiddill* v. *Farnell*, 3 Sm. & G. 428, *Stuart*, V.-C., held, that where a principal gave a Bank of

(*n*) But see *Roby* v. *Twelves*, Styles, 423, where the Court of Upper Bench established the validity of a custom that a copyholder may make a writing in the nature of a letter of attorney to two copyholders of the same manor to surrender his copyhold after his death: see, too, *Wallis* v. *Bucknall*, *ibid.* 291, 311.

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England power for the transfer of a sum of stock into the attorney's name, intending the same to be for her benefit, and then died, and the attorney, having notice of the death, did not act upon the power till after that event, the legal and beneficial interest in the stock was validly transferred to the attorney. Of course, where the power is acted on before the death, so as to bind third parties, that event produces no effect. Thus where bankers, pursuant to a principal's direction, bought 1,000*l.* consols, for him and his wife, and he died after the contract, but before the transfer was completed, it was held that the wife was entitled to the stock by survivorship: *Vance* v. *Vance*, 1 Beav. 605.

Payment out of Court, where principal is possibly dead.

Money in Court belonging to a person abroad has been paid out to his attorney acting under a special power, on the latter giving an undertaking to return it in the event of its being afterwards ascertained that his principal was then dead: *Ex parte Brown*, 5 L. J. (N. S.) Ch. 24. And where A. assigned a fund in Court to B., who was resident in India, and B. gave C. a general power to act for him in England, the fund was paid out to C. on the joint petition of A., B., and C., although there was a possibility that B. might be dead at the time of the payment: *Fell* v. *Jones*, 17 Beav. 521.

Appointment of another attorney.

Of the second class of circumstances which effect an implied revocation, the commonest instance is afforded by the appointment of another attorney to do that which was committed to the former attorney: *Ex parte Mure*, 2 Cox, 63, 72: see *In the goods of Lucas*, 17 Jur. 1186. It may safely be laid down, in accordance with continental jurists (see 3 Burge, Com. 988; and *Copeland* v. *Merc. Insurance Co.*, 6 Pick. Rep. 198, there cited), that such revocation would take place either when both powers are general, or both are special; that when the first power is general, and the second special, the former is revoked only in respect of that which is the subject of the second; and that a special power is not revoked by a general power subsequently given to another.

Revocation *pro tanto*.

Other acts of

Another instance of the class under consideration

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is afforded by a case, where an officer, having granted a power of attorney to receive his pension for wounds, went to the War Office, and himself received it. This was held to revoke the power: *Knight* v. *Bulkeley*, 33 L. T. 7. As to this case, see 47 Geo. 3, sess. 2, c. 29, s. 4, and *Lloyd* v. *Cheetham*, June 25, 1861, per *Stuart*, V.-C. So if the attorney was authorised to collect certain debts, if the principal should himself collect any of the debts, this might amount to a revocation: see Story, Agency, s. 475. But a proxy made by a canon to act for him "in his absence," or "whenever he should be absent," in all corporate business, is not revoked by the principal, in an intermediate period, appearing and acting for himself: *Eyre* v. *Lovell*, 3 Doug. 66.

principal inconsistent with continuance of power.

In all these cases of implied revocation, except where the principal dies, acts done by the attorney before he knows of the revocation, are good against the principal, if they were to his disadvantage, but the latter may consent to avoid those which were for his benefit: per *Buller*, J., *Salte* v. *Field*, 5 T. R. 214, 215. And our law does not appear to recognise the distinction in this respect which prevails in the law of Scotland, as between general and limited mandates; the latter, unlike general powers, being incapable of extension by mere inference and *bona fides:* see Bell, Comm. 6th ed., 194. Thus where a surety empowered the creditor to act according to his discretion in the settlement of the affairs, and the creditor accordingly went abroad and entered into a composition with the principal debtor, and previous to the compromise the surety became bankrupt, of which event the attorney was ignorant, it was held that his authority was not determined: *Ex parte MacDonnell*, Buck, 399. On the whole, the rule laid down by Mr. Justice Story seems trustworthy, namely, that as to the attorney, the revocation generally takes effect from the time when the revocation, by act of the principal, is made known to him; and as to third persons when it is made known to them, and not before: see Story, Agency, s. 470.

Acts done by the attorney without notice of the revocation.

The Law of Property and Trustees Relief Amend-

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ment Act (22 & 23 Vict. c. 35), sect. 26, provides, that certain persons making payments or acting under or in pursuance of a power shall not be liable by reason of its previous revocation. The following is the section referred to :—

Trustee, &c., making payment, &c., under power of attorney not to be liable by reason of death of party giving such power.

"No trustee, executor, or administrator making any payment or doing any act *bonâ fide*, under or in pursuance of any power of attorney, shall be liable for the moneys so paid or the act so done, by reason that the person who gave the power of attorney was dead at the time of such payment or act, or had done some act to avoid the power, provided that the fact of the death, or of the doing of such act as last aforesaid, at the time of such payment or act *bonâ fide* done as aforesaid by such trustee, executor or administrator, was not known to him : Provided always, that nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money, against the person to whom such payment shall have been made, but that such person so entitled shall have the same remedy against such person to whom such payment shall be made as he would have had against the trustee, executor, or administrator, if the money had not been paid away under such power of attorney."

Before the passing of this Act, a Court of Equity would scarcely have held a trustee liable for a misapplication of money under the circumstances mentioned in this section. An executor or administrator, under the same circumstances, would hardly have been held to have committed a *devastavit*. If so, the first half of the section just quoted must be regarded as of no great practical utility.

The enactment above set out, which is limited to the dealings of trustees, and personal representatives of deceased persons, is supplemented by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), which contains the following provisions for the protection of persons making payments, or doing acts in good faith pursuant to powers of attorney :—

Payment by attorney under power without notice of death, &c., good.

Sect. 47. "(1.) Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become lunatic, of unsound mind, or bankrupt, or had revoked the power,

if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same. The Determination of the Power.

"(2.) But this section shall not affect any right against the payee of any person interested in any money so paid, and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

"(3.) This section applies only to payments and acts made and done after the commencement of this Act."

And by the Conveyancing Act, 1882 (45 & 46 Vict. c. 39), it is enacted as follows :—

Sect. 8. "(1.) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser,— Effect of power of attorney, for value, made absolutely irrevocable.

"(i.) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

"(ii.) Any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and

"(iii.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

"(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act."

Sect. 9. "(1.) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser,— Effect of power of attorney, for value or not, made irrevocable for a fixed time.

"(i.) The power shall not be revoked, for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the

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power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

"(ii.) Any act done within that fixed time, by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and

"(iii.) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power within that fixed time.

"(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act."

The 8th section relates only to powers of attorney given for valuable consideration, and may in some cases prove convenient by enabling a security to be effected for an advance (*o*). An irrevocable power of attorney may be given by the borrower to the lender, authorising the latter to sell and convey land, or to transfer stock, or otherwise to realise the security when he shall think proper. On repayment of the loan the power may be cancelled by mutual

(*o*) This section seems merely to give statutory confirmation to the settled case law with regard to powers of attorney given as security for debts or other valuable consideration. The general principle has long been established that such instruments are not revocable either by an express revocation by the principal: *Bromley* v. *Holland*, 7 Ves. 28; *Gaussen* v. *Morton*, 10 B. & C. 731; nor by the principal's bankruptcy: *Winch* v. *Keeley* (unless the person dealing with the attorney had notice of the bankruptcy): see *Ex parte Snowball*, L. R. 7 Ch. 534: nor by his marriage: *Parnham* v. *Hurst*, 8 M. & W. 743; nor, it would seem, by his insanity: see Story, Agency, 483; nor, in equity, by his death: *Hatch* v. *Searles*, 2 Sm. & G. 147; *Bailey* v. *Collett*, 18 Beav. 179; *Carter* v. *White*, 20 Ch. D. 228; Lord *Ellenborough* in *Watson* v. *King*, 2 Camp. 272, seems to have considered that, at law, a power given for value would be determined by the death of the principal; but it is conceived that the rule of equity on this point would now prevail in all divisions of the High Court of Justice: see sect. 25 (11) of the Judicature Act, 1873 (36 & 37 Vict. c. 66).

consent of the parties; and thus a transfer and retransfer of the property may be dispensed with. Such a power will operate as a valid equitable security: *Spooner* v. *Sandilands*, 1 Y. & C. C. C. 390; *Abbott* v. *Stratten*, 3 J. & L. 603; *Ex parte Hodgson*, 1 Gl. & J. 13; *Re Parkinson*, 13 L. T. (N. S.) 26. Of course the lender should make and give such inquiries and notices as would be necessary in the case of an actual assignment, as to which see *ante*, Vol. III. sub tit. "MORTGAGES." If the security in respect of which the power is given consists of lands, a deposit of the title-deeds should be required.

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Inasmuch, however, as a power of attorney is a delegation to the person named in the instrument personally, and as has been seen (*ante*, p. 881) cannot be delegated without express authority from the donor, it seems that on the death of the attorney the power would necessarily lapse, as no provision is made in the statute for extending it to his representatives or assigns after his death. A power of attorney without assignment therefore does not seem to be a very satisfactory form of security except for the purpose of a temporary loan.

The ninth section applies not only to powers of attorney given for value but also to those given without any valuable consideration, and effects a very important alteration in the law, which will probably prove to be of great practical convenience. By virtue of this enactment a person resident abroad will be able to appoint an attorney under a voluntary power, expressed to be irrevocable for a fixed period, for the purpose of realising property in England; and the attorney so appointed will, at any time during the period named in the power, be able to make a good title to a purchaser, notwithstanding any express revocation purported to be made by the principal, on his death, marriage, lunacy, or bankruptcy, and also notwithstanding that the attorney or the purchaser have notice of such revocation or event.

In cases not falling within the recent statutory enactments, it will still be necessary to observe the

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rules and precautions formerly in use, viz.: first, that a security for money should not be made by a power of attorney alone, but should be (as it usually is) accompanied by an assignment (*p*); secondly, that on the sale of an estate, if any of the deeds forming the title should have been executed by attorney, the vendor should stipulate that he shall not be required to show that the principal was alive at the time of execution; and, thirdly, as Lord *St. Leonards* observes, that where a purchaser chooses to take a conveyance executed by attorney, the attorney should make a declaration that he will hold the purchase-money in trust for the purchaser either until it appear that the vendor was alive at the time of the execution, or, if he shall be dead, until the estate is duly conveyed.

Security should not be made by a power only.

Stipulation as to deeds executed by attorney.

3. Renunciation.

Thirdly, the power may terminate by the attorney's renunciation, even after he has accepted, and in fact performed the commission. If the agency be founded on valuable consideration, the agent, by renouncing (whether before or after part-execution), is liable for the damage which the principal may sustain thereby. If the agency be gratuitous, the principal will be entitled to damages only in case it have been in part executed: Story, Agency, s. 478.

Express renunciation.

Renunciation, like revocation, may be either express or implied. First, as to express renunciation. Foreign jurists hold, that, if the attorney does not immediately notify his renunciation to the principal, he is liable for the damage occasioned by the delay; and that if he renounce *dolosè*, at a critical time, when such renunciation must occasion loss to the principal, he is also liable in damages: 3 Burge,

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(*p*) In equity, deeds poll, in the form of powers of attorney have, in some cases, been held to amount to assignments, or covenants to assign: see *Dale* v. *Smithwick*, 2 Vern. 151; *Spooner* v. *Sandilands*, 1 Y. & C. C. C. 390; *Bennett* v. *Cooper*, 9 Beav. 252; *Re Parkinson*, 13 L. T. (N. S.) 26. See also *Carr* v. *Allatt*, 27 L. J., Exch. 385. As to the effect of accompanying a voluntary gift with the execution of an irrevocable power of attorney: see *Blakely* v. *Brady*, 2 Dr. & W. 311; *Pearson* v. *The Amicable Assurance Office*, 27 Beav. 229; see, too, *Parnell* v. *Kingston*, 3 Sm. & G. 337.

Comm. 989; Colquhoun, Summary of the Roman Civil Law, iii. 87. In such a case it is presumed that it would be immaterial whether or not the agency was gratuitous. The writer has found no case on the subject in our Reports.

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Implied renunciation may take place in two cases, (1) where the attorney becomes insane or otherwise incapable, and (2) where he dies. The attorney's bankruptcy would probably not be held an implied renunciation, except where the authority is to receive monies on account of the principal: *Hudson* v. *Granger*, 5 B. & Al. 31. Where there are two or more joint attornies it seems that the death of one would be a renunciation (*q*). Well-drawn instruments accordingly make the power exercisable by each of the attornies.

Implied renunciation.

Powers of attorney often provide against the inconveniences of renunciation, express or implied, by appointing a person to act in case of the incapacity, refusal, or death of the original attorney. It would, perhaps, be desirable to extend this provision to cases where such attorney becomes bankrupt or insolvent.

Appointment of another attorney.

Fourthly, the power may determine by its exhaustion. Thus, the authority of an agent for the purpose of sale is at an end by the sale, and therefore an auctioneer after the sale has no authority to treat of the terms upon which the title is to be made: *Seton* v. *Slade*, 7 Ves. 276. The agent is *functus officio*, and the agency has its natural termination: Story, Agency, s. 499.

4. Exhaustion of the power.

Fifthly, the power may determine in consequence of the expiration of the time limited, expressly or impliedly, for its exercise. No difficulty can arise when the power is given for a fixed time, as, till the 1st of January next, or till the majority of an in-

5. Expiration of time.

(*q*) It is said that a power of attorney to two to deliver seisin is valid after the death of one (M. 32, 33 Eliz. W. 68, cited in Co. Litt. 52 b, note (6)). But see *Brassey* v. *Chalmers*, 16 Beav. 233. Where a warrant of attorney is given to confess judgment to two, and one dies, judgment may be entered up by the survivor: *Fendall* v. *May*, 2 Mau. & S. 76; *Spong* v. *Tucker*, 1 Y. & J. 206. But this is not the case of a naked power.

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fant of known age. So, too, an authority to act during the principal's absence from England is determined by his return, unless the instrument expressly extend the period to the receipt by the attorney of a notification of that event. And such limitation need not be expressly imposed by the operative part of the deed, if the real purpose and object of the power appears elsewhere in the deed. So where the operative part of a power of attorney was in general terms, but was preceded by a recital that the principal was going abroad, and was desirous of appointing attornies to act for him during his absence, it was held that the operative part of the deed was controlled by the recital, and that the time during which the power could be exercised was limited to the period of the principal's absence from this country : *Danby* v. *Coutts & Co.*, 29 Ch. D. 500. In the absence of such provision, it would seem that the attorney's acts will bind until notice of the principal's return : 3 Burge, Comm. 988, 989. Grants of administration, *durante absentiâ*, to attornies are now limited until the executor, or the party entitled to administration, shall duly apply for and obtain probate or administration : *In the goods of Cassidy*, 4 Hagg. 360 ; and see *Edgar* v. *Reynolds*, 4 Jur. (N. S.) 399.

Implied limitation of time.

The following are cases of the determination of a power where the time for its exercise is impliedly limited. In the Irish provision-trade, a general authority to a broker to sell expires with the day on which it is given. Accordingly the principal is not bound by a contract of the broker made after that day : *Dickenson* v. *Lilwall*, 4 Camp. 279. So the time for the execution of a power respecting a particular person or chattel may be regarded as impliedly limited to the duration of the existence of such person or chattel. Thus a power to deliver seisin to (*r*), or to purchase church preferment for

(*r*) Co. Litt. 52 b. Lord *Coke* gives another reason : "If the feoffee dieth, liverie cannot be made to his heire, because then he should take by purchase, where heires were named by way of limitation."

(see *Cowper* v. *Mantell*, 22 Beav. 231) A. B., is determined by his death, and a power to sell a particular ship ceases on the loss of such ship : Story, Agency, s. 499. **The Determination of the Power.**

Lastly, it may be observed, that whenever and however the attorney's authority terminates, that of any substitute appointed by him in general also ceases : Story, Agency, s. 469 ; Pothier, Traité du Contrat de Mandat, s. 112. Not so where the attorney has, pursuant to the terms of the power, appointed another to act as agent for the principal : Story, *ibid.* s. 490 ; Pothier, *ibid.* s. 105. Then, of course, the principal, not the attorney, is the mandant. Determination of authority of substitute.

8. Stamps on Powers of Attorney.

The following list of the stamp-duties to which powers of attorney are liable is taken from the schedule to the Stamp Act, 1870 :—

Letter or Power of Attorney, or commission, factory, mandate, or other instrument in the nature thereof.

	£	s.	d.
(1.) For the sole purpose of appointing or authorising any one person to vote as a proxy at any one meeting at which votes may be given by proxy	0	0	1
(2.) By any petty officer, seaman, marine or soldier serving as a marine, or by the executors or administrators of any such person for receiving prize-money or wages	0	1	0
(3.) For the receipt of the dividends or interest of any stock :			
Where made for the receipt of one payment only	0	1	0
In any other case	0	5	0
(4.) For the receipt of any sum of money or any bill of exchange or promissory note for any sum of money not exceeding 20*l.*, or any periodical payments not exceeding the annual sum of 10*l.* (*not being hereinbefore charged*) . . .	0	5	0
(5.) For the sale, transfer, or acceptance of any of the Government or Parliamentary stocks or funds :			
Where the value of such stocks or funds does not exceed 20*l.*	0	5	0
In any other case	0	10	0
(6.) Of any kind whatsoever not hereinbefore described	0	10	0

Stamps.

Exemptions.

(1.) Letter or power of attorney for the receipt of dividends of any definite and certain share of the Government or Parliamentary stocks or funds producing a yearly dividend of less than 3*l.*

(2.) Letter or power of attorney or proxy filed in the Court of Probate in England or Ireland, or in any ecclesiastical court.

(3.) Letter or power of attorney for voting on any election of directors of the East India Company.

Sect. 104 of the Act also exempts from duty an order by the proprietor of stock for payment of the dividends thereon to any person named in the order.

Powers of attorney within the Stamp Acts.

But few questions have arisen as to what are powers of attorney within the Stamp Acts. Lord *Tenterden*, in *Case* v. *Barnard*, cit. 12 A. & E. 562, is said to have decided, that a paper authorising A. to sell certain property, and pay out of the proceeds rent and expenses, and his own commission, did not require a stamp. But this case may be considered as overruled by *The Queen* v. *Kelk*, 12 A. & E. 559, and perhaps, as Mr. *Tilsley* remarks, the authority was not a substitution, but merely a direction to act as agent in the transaction in question. The following written authority was held to be a power of attorney, requiring a thirty-shilling stamp under 55 Geo. 3, c. 184 :—"I authorise you to endorse my name to three several bills of exchange now in your possession, and which endorsement I undertake shall be binding upon me, and I undertake to pay you the amount of the several bills as they respectively become due, should they not be duly honoured when mature :" *Walker* v. *Rennet*, 2 C. B. 850. A power of attorney to receive costs in bankruptcy has been held not to require a stamp: *Re Elgie*, 8 L. J. (N. S.) Bank. 52 (*s*); nor does a mere recognition of an authority to distrain: *Pyle* v. *Partridge*, 15 M. & W.

(*s*) An assent to a creditor's deed under sect. 192 of the Bankruptcy Act, 1861, was held not to be invalidated by the fact that it contained an authority to a person to sign the assent on behalf of a creditor, and was not stamped as a power of attorney : *Matheson* v. *Ross*, 2 H. L. C. 286 ; *Rutty* v. *Benthall*, L. R. 2 C. P. 488.

Stamps.

20; nor apparently a mere authority to act under a particular bill of sale. *Baker* v. *Dale,* 1 F. & F. 271; or to take possession of premises and property for the principal: *Vansittart* v. *James,* 1 F. & F. 156. And an authority from A.'s attorney to B. to pay money for A. need not be stamped: *Parker* v. *Dubois,* 7 C. & P. 406. So an unstamped indorsement on an award may be a sufficient authority to a third person to demand the money awarded: *Langman* v. *Holmes,* 2 W. Bl. 990. But an authority from a railway company, sealed with their common seal, empowering payment to their solicitor of the parliamentary deposit, appears to require a stamp: *Re Dartmouth and Torbay Rail. Co.,* 9 W. R. 609.

COMMON FORMS.

Commencement and witnessing part where there are no recitals.

KNOW ALL MEN BY THESE PRESENTS, that [*in consideration of the premises, or, state the consideration*] (*a*), I, A. B., of, &c., do hereby [irrevocably] (*b*) appoint C. D., of, &c., my attorney for me in my name to, &c.

The same where there are several principals and attornies.

KNOW ALL MEN BY THESE PRESENTS [*in consideration, &c.*], that we, A. B., of, &c., C. D., of, &c., and E. F., of, &c., do and each of us doth hereby [irrevocably] appoint G. H., of, &c., J. K., of, &c., and L. M., of, &c., and any one or more of them, our attornies and attorney for us the said A. B., C. D., and E. F., and any one or more of us, and in the names or name of us or any one or more of us to, &c. (*c*).

Commencement and witnessing part where there are recitals.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., sends greeting: WHEREAS [*recitals*]: NOW THESE PRESENTS WITNESS, that [*in consideration, &c.*] he the said A. B. doth hereby [irrevocably] appoint C. D., of, &c., his attorney for him and in his name to, &c.

The same where there are several principals and attornies.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., C. D., of, &c., and E. F., of, &c., send greeting: WHEREAS [*recitals*]: NOW THESE PRESENTS WITNESS, that they the said A. B., C. D., and E. F., do and each of them doth hereby [irrevocably] appoint G. H., of, &c., J. K., of, &c., and L. M., of, &c., and any one or more of them, the attornies and attorney of the said A. B., C. D., and E. F., and any one or more of them, for them the said A. B., C. D., and E. F., and any one or more of them, and in their or his names or name, to, &c. (*d*).

Power to enforce or resist claims.

To ENFORCE, resist, allow, remit, set-off, compromise, or refer to arbitration, any claim by or against me [*or* us or either of us] in respect of the premises.

Power to bring actions, &c.

To INSTITUTE and carry on, or discontinue and to defend, or compromise, or to confess judgment, or allow judgment to go

by default in any action or legal proceeding in relation to the premises or any of them.

Power to receive money, give receipts, &c.

To DEMAND, receive, take transfers of, and recover or allow in account, any money or property belonging to me [*or* us or any one or more of us], and to give receipts and releases, and in a proper case indemnities, for or in respect of any money or property so received or allowed in account by, or transferred or delivered to, the attorney [*or* attorneys or any one or more of them] under or by virtue of these presents.

Power to draw bills, &c.

To DRAW, accept, indorse, give, make or negotiate, any cheque, bill, note, guarantee or other security for any of the purposes hereof.

Power to execute instruments, &c.

To EXECUTE and do, or concur in or cause to be executed and done, all such deeds, instruments and things in relation to the premises as in the absolute discretion of the said [attornies or] attorney shall seem expedient as fully and effectually as I [*or* we or any one or more of us] could have done if personally present.

General words where there are one principal and one attorney.

AND GENERALLY to execute and do all such deeds and things in relation to the premises as the said attorney shall think expedient, as fully and effectually as the said [*principal*] could have done if personally present.

General words where there are several principals and attornies.

AND GENERALLY to execute and do all such deeds and things in relation to the premises as the said attornies or attorney shall think expedient, as fully and effectually as the said [*principals*], or any one or more of them, could have done if personally present.

Power to appoint substitutes.

AND ALSO from time to time to substitute and appoint any person or persons to act under or in place of the said [attornies or] attorney in all or any of the matters aforesaid, and from time to time every such substitution and appointment at pleasure to revoke.

The same, another form.

AND THE SAID [*principal*] hereby empowers his said [attornies or] attorney from time to time, by any attested writing,

under [their or] his [hands or] hand, to substitute and appoint an attorney or attornies under [them and] him, with the same powers as, or with more limited powers than, as hereinbefore expressed to be hereby given, and from time to time such substitute or substitutes at pleasure to remove, and another or others, by such writing as last aforesaid, to appoint.

Agreement to ratify the attorney's acts.

And he the said [*principal*] hereby ratifies and confirms [and covenants to ratify and confirm] whatsoever his said [attornies or] attorney, or [their or] his substitute or substitutes, shall do or cause to be done in or about the premises by virtue of these presents.

The same where there are several principals.

And they the said [*principals*] do and each of them doth hereby ratify and confirm [and jointly and severally covenant to ratify and confirm] whatsoever the said [attornies or] attorney, or [their or] his substitute or substitutes, shall do or cause to be done in or about the premises by virtue of these presents. [*If the power is to be exercised abroad the following clause may be added:* Including in such confirmation whatsoever shall be done between the time of the decease of the said [*principal*] (*s*) or the revocation by other means of these presents, and the time of such decease or revocation becoming known to the said [attornies or] attorney [or their] or his substitute or substitutes.]

Indemnity clause.

And it is hereby declared, that the attornies for the time being acting under these presents shall be respectively chargeable only with such monies or property as they shall respectively actually receive, notwithstanding their signing any receipt for the sake of conformity, and shall not be answerable the one for the other of them, nor for the act or default of any substitute, deputy, agent, banker or broker into whose hands any monies or property shall come under these presents, nor for any loss whatsoever, unless the same shall happen through their own wilful default respectively.

(*s*) If there are more principals than one, say—
"between the time of the decease of the survivor of the said [*principals*] or, &c."

Appointment of another attorney in case of the incapacity, refusal, or death, of the original attornies.

And in case of the absence of the said attornies, or either of them, from the place where the deeds and things aforesaid or any of them shall be or ought to be executed and done, or of their or his inability or refusal to execute and do such deeds and things or any of them, or in case the said attornies, or either of them, shall die, [or be outlawed, or be declared bankrupt, or become insolvent within the meaning of some act of parliament for the relief of insolvent debtors,] then I hereby appoint [A. B.], of, &c., to act as my attorney in the stead of the said [C. D.] and [E. F.] [*the original attornies*], or either of them, as the case may require, either from time to time during such absence, or so long and so far as such inability or refusal shall continue or extend, or in case of such death [outlawry, bankruptcy, or insolvency] of the said [C. D.] and [E. F.], or either of them, then until all the powers expressed to be hereby given shall be determined, in like manner as if the name of the said [A. B.] were thenceforth inserted in these presents, instead of the names or name of the attornies or attorney so being absent, or becoming unable, or refusing, or dying [or becoming outlawed, bankrupt, or insolvent] as aforesaid.

PRECEDENTS.

I. *POWER of* ATTORNEY *to* EXECUTE *an* INDENTURE.

I. To Execute an Indenture.

KNOW ALL MEN BY THESE PRESENTS (*t*), That I [*principal*], of, &c., Do hereby appoint [*attorney*], of, &c., my attorney, for me and in my name, and as my act and deed, to sign, seal, and deliver a certain indenture already prepared and engrossed, bearing date or intended to bear date on or about the —— day of ——, 18—, expressed or intended to be made between me, by my name and description of [*insert description*], of the one part; and [A. B.], of, &c., of the other part; whereby certain freehold messuages and hereditaments, situate at ——, in the county of ——, and known as ——, are or are intended to be conveyed by me to the said [A. B.], by way of mortgage to secure the payment of a sum of £——, and interest thereon, at the rate of —— per cent. per annum, as therein mentioned [*or otherwise as the case may be; add power to appoint substitutes, and agreement to ratify as above*, pp. 913, 914].

IN WITNESS, &c. (*u*).

(*t*) Stamp, 10*s*.

Execution and form of attestation where a deed is executed by attorney.

(*u*) As to the mode of execution of a deed by attorney, *vide ante*, p. 884. The most correct form is thus:

"A. B. [*the principal*], by C. D. [*the attorney*]."

Or the execution may now be in the following form:

"C. D. [*the attorney*], by the authority of A. B. [*the principal*]."

The deed of course should be prepared in the ordinary way in the name of the principal. The form of attestation may be thus:—"Signed, sealed, and delivered by the within-named [*attorney*], as the attorney of the within-named [*principal*], in the presence of [*witness*]."

Testimonium of a deed executed by attorney.

The testimonium may be thus:—"In witness whereof [*attorney*], of, &c., by virtue of a power of attorney under the hand and seal of the said [*principal*], dated the —— day of ——, 18—, and hereunto annexed, hath hereunto set the hand and seal of the said

II. *POWER of* Attorney *to* affix *the* seal *of a* Joint Stock Company *to instruments executed abroad.*

II. To Affix Seal of Company.

KNOW ALL MEN by these presents (*v*), that the —— Company, Limited, being a company registered and incorporated in England under the Companies Acts, 1862 to 1886, and having their registered office at ——, in England, do hereby appoint [*attorney*], of, &c., and [*attorney*], of, &c., to be the attornies of the company in ——, to affix in conformity with the provisions of the Companies Seals Act, 1864, the seal of the company to all deeds, contracts, instruments, and documents whatsoever to which the company are or may hereafter be made parties; And the company direct the said [*attornies*] shall on the sealing, under this power, of any such deed, contract, instrument, or document as aforesaid, endorse thereon a certificate signed by them of such sealing.

[*principal*] the day and year first above written [*or* this —— day of ——, 18—]."

The power of attorney should accompany the deed; but if the original cannot be obtained for the purpose (as where the power embraces other objects), an attested copy should be annexed. Then, in the testimonium, for "and unto annexed" say "a true copy whereof is hereunto annexed." The possibility of the attorney's authority having been determined by the death, or revoked by the act of the principal, previously to the execution of the conveyance, exposes purchasers to some danger in accepting conveyances executed in this manner; and, therefore, it is desirable that some collateral evidence of the existence of the principal at the time of execution should accompany the deed, for the satisfaction of future purchasers—as a letter written by him at a subsequent period.

In *Johnson* v. *Mason*, 1 Esp. 89, an action of replevin, the deed of lease was executed by an attorney for the lessor. Counsel for the plaintiff was not permitted to ask the attorney whether he had so executed, until the deed had been proved by the attesting witness. In the same case Lord *Kenyon* refused to allow the attorney to be asked questions arising out of the deed, unless the power was produced.

(*v*) Stamp, 10*s*.

III. *POWER of* Attorney *to* surrender Copyholds.

III. To Surrender Copyholds.

KNOW ALL MEN by these presents (*w*), that I [*principal*], of, &c., one of the copyhold or customary tenants of the Manor of ——, in the county of ——, do hereby irrevocably appoint [*attorney*], of, &c., my attorney for me and on my behalf to appear at the next or some subsequent general Court to be holden for the said manor, or before the lord or lady, lords or ladies, or his, her, or their steward or deputy steward for the time being out of Court, and to surrender into the hands of the said lord or lady, or lords or ladies, either personally or by the hands and acceptance of the said steward or deputy steward, by the rod, and according to the custom of the said manor, All those, &c. [*describe parcels*], to the use of [*purchaser*], of, &c., his heirs and assigns for ever, according to the custom of the said manor: And generally to do, perform, and execute all other acts and things as shall be requisite for the purpose of procuring the said [*purchaser*], his heirs or assigns, to be admitted tenant or tenants of the said premises, and for assuring the same to the use of the said [*purchaser*], his heirs and assigns for ever, according to the said custom; I hereby ratifying and confirming, and agreeing to ratify and confirm all that my said attorney shall do or cause to be done in or about the premises by virtue of these presents.

In witness, &c.

IV. *POWER of* Attorney *to obtain* admittance *to* Copyholds.

KNOW ALL MEN by these presents (*w*), that I [*principal*], of, &c., one of the copyhold or customary tenants of the Manor of ——, in the county of ——, hereby irre-

(*w*) Stamp, 10*s*.

IV. To Obtain Admittance to Copyholds.

vocably appoint [*attorney*], of, &c., for me and on my behalf to appear, &c. [*as in last Precedent*], and to pray for and receive and take from such lord or lady, lords or ladies, steward or deputy steward, by the rod, and according to the custom of the said manor, admittance to ALL THOSE, &c. [*describe parcels*], to the use of one the said [*principal*], my heirs and assigns, according to the said custom, SUBJECT nevertheless to a condition for making void the same admittance if [*mortgagor*], of, &c., his heirs, executors, administrators, or assigns, shall on the —— day of —— next, pay to me the said [*principal*], my executors, administrators, or assigns, the sum of £——, with interest for the same in the mean time at the rate of —— per cent. per annum; I hereby ratifying and confirming and agreeing to ratify and confirm all that my said attorney shall do or cause to be done in or about the premises, by virtue of these presents.

IN WITNESS, &c.

V. *POWER of* ATTORNEY *to* RECOVER *a* DEBT (*x*).

KNOW ALL MEN BY THESE PRESENTS (*y*), that I [*principal*], of Cheapside, in the city of London, linen-merchant, hereby appoint [*attorney*], of Kingston, in the island of Jamaica, gentleman, my attorney, for me and in my name to demand, sue for and recover all and every sums and sum of money that are or is now due and owing to me from and by [*debtor*], late of the city of London, but now of Kingston aforesaid, esquire (*z*), and on receipt or payment

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(*x*) If the debt is to be recovered in a British colony or dependency under the stat. 5 & 6 Will. 4, c. 62, s. 15, a declaration in support of the claim will be required, for a form of which, see *post*, Precedent XXIV., p. 969.

(*y*) Stamp 5*s.*, if the debt is under 20*l.*; otherwise, 10*s.*

(*z*) Or the debt may be described specifically as—

"All that debt or sum of £——, now due and owing to me from [*debtor*], of, &c., for goods sold and delivered by me to

Variation, according to the nature of debt.

V. To Receive a Debt in the West Indies.

thereof, or of any part thereof, for me and in my name acquittances or other sufficient discharges for the same to make, sign, and deliver, and to do all other lawful acts and things in and about the premises, as effectually as I could do if personally present; and whatsoever the said [*attorney*] shall do, or cause to be done, in or about the premises by virtue of these presents, I the above-named [*principal*] hereby agree to ratify and confirm.

IN WITNESS, &c.

SIGNED, SEALED and DELIVERED by the said [*principal*], in the presence of [*Two Witnesses*]. } [*Principal*] (L. S.)

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the said [*debtor*], as appears by the bill or account hereunto annexed signed by me."

Or if the debt arose on a bill of exchange—

"All moneys due and owing to me by virtue of the bill of exchange hereunto annexed, dated the —— day of ——, drawn by me upon, and accepted by the said [*debtor*], for the sum of £——, payable —— months after the date thereof, including as well the principal money mentioned in the said bill, as the interest, commission, and all other charges and expenses which shall have become due thereon, or have been incurred by the non-payment thereof."

Or if the debt is secured by mortgage—

"All moneys due and owing for principal, interest, and costs on the security of a mortgage dated, &c., and made between [*parties*]."

VI. *POWER of* ATTORNEY *to receive a* LEGACY (*a*), *with Power to consent to an Abatement in case of a Deficiency of Assets; and, if required, to give a Bond to the Executors to refund.*

TO ALL TO WHOM THESE PRESENTS SHALL COME (*b*) [*principal*], of, &c., sends greeting: WHEREAS [*testator*], late of, &c., deceased, by his will dated, &c., and proved, &c., gave and bequeathed to the said [*principal*] the sum of 100*l.*, to be paid within the space of twelve months after his decease, and appointed [*executors*], of, &c., executors in trust of his said will: NOW THESE PRESENTS WITNESS, that the said [*principal*] hereby appoints [*attorney*], of, &c., his attorney, for him and in his name to demand and receive of and from the said [*executors*], or either of them, or any other person or persons whom it may concern, the said legacy or sum of 100*l.* so as aforesaid bequeathed to the said [*principal*], together with any interest which may be due for the same, and upon payment of the same legacy and interest to give an effectual receipt and discharge for the same; and in case it shall be proved to the satisfaction of the said [*attorney*], that the estate of the said [*testator*] is inadequate to the payment in full of the said legacy, in a due course of administration thereof, then to accept such sum or sums of money in satisfaction and discharge of the same legacy, as the said attorney shall be of opinion (regard being had to the amount of the assets of the said [*testator*]), ought to be paid thereon; And also for and in the name and as the act and deed of the said [*principal*], if the said attorney shall think proper, and he shall be required so to do, to execute any bond or covenant for the repayment of the said legacy, or of a due proportion thereof, in case the estate and effects of the said [*testator*] shall subsequently to the payment thereof prove insufficient to discharge the debts of the said [*testator*],

Recital of will.

Testatum.

Power to receive legacy with interest.

To give receipt.

To consent to abatement.

To give bond to refund.

(*a*) An executor would probably be safe in paying a legacy to an attorney with a general power to receive monies: see *Carr* v. *Eastabrook*, 2 Cox, 390; *Yerbury* v. *Head*, *Ibid.* 391. That these cases, however, cannot be relied on if payment is sought from the paymaster-general: see 2 Dan. Ch. Practice, 3rd ed. 1323. See, however, *Fell* v. *Jones*, *supra*, p. 41.

(*b*) Stamp, 10*s.*

VI. To Receive a Legacy.

and also the legacies bequeathed by his said will, in the same rate and proportion as the said legacy shall have been paid; and upon non-payment of the said legacy or sum of 100*l.*, or any part thereof, or of any interest due in respect thereof, for or in the name of the said [*principal*], to commence and prosecute any such action or other proceeding for the recovering payment of the same legacy, or any part thereof, as the said [*attorney*] shall think proper; And also to appear for the said [*principal*] to any action or other proceeding that shall or may be instituted touching the administration of the estate and effects of the said [*testator*], in which the said [*principal*] shall be made defendant, and to defend the same, and generally to take and concur in such proceedings, in regard to any such action as the said [*attorney*] shall deem expedient; And also to submit any matter or matters connected with the claim of the said legacy, or the administration of the estate of the said [*testator*], to arbitration, and in the name of the said [*principal*] execute and enter into any bond or bonds, covenant or covenants, to abide by and perform the award; And generally to do, perform, and execute all matters and things in and about the premises, as fully and effectually as the said [*principal*] might or could have done if personally present. [*Power to appoint substitutes, and agreement to ratify the acts of the attorney and substitute, ut ante*, pp. 913, 914.]

To bring suits.

To defend suits.

To submit to arbitration.

General words.

IN WITNESS, &c.

VII. *POWER of* ATTORNEY *to receive* SHARES *under a* WILL, *and to concur in paying off a* MORTGAGE *to which such Shares were subject.*

TO ALL TO WHOM THESE PRESENTS SHALL COME (*c*): WHEREAS [*Recite a mortgage by* [*B. P. L.*], *and his will*,

Recitals:

(*c*) Stamp, 10*s.*

VII. To Receive Shares under a Will, and to Concur in Paying Off a Mortgage.

giving [*E. B. P. L.*], [*M. K.*] *and* [*E. K.*] *beneficial interests in the mortgaged property, and appointing* [*W. B.*] *his executor. Recite the testator's death. Recite the death of* [*E. B. P. L.*] *intestate, leaving* [*E. K.*] *one of his next of kin*]: AND WHEREAS the said [M. K.] and [E. K.] are desirous of appointing a proper person as their attorney, with such powers and authorities as may be necessary or convenient for enabling him to represent and act for them and each of them the said [M. K.] and [E. K.], in all matters relating to the real and personal estate late of the said [B. P. L.] deceased, and the proceeds and investments thereof respectively, and the administration thereof, and the trusts of the above-recited will, and the beneficial interests of the said [M. K.] and [E. K.] respectively therein, or relating to any claims or rights of the said [E. K.] or the said [M. K.] in her right as one of the next of kin of the said [E. P. L.] deceased, so far as relates to the share and interest late of the said [E. B. P. L.] of and in the real and personal estate of the said [B. P. L.], as fully and effectually and with the same absolute discretion in all respects as the said [M. K.] and [E. K.], or either of them, could act and do if they, he, or she were personally present: THEREFORE KNOW YE AND THESE PRESENTS WITNESS, that for effectuating the purposes aforesaid, they the said [M. K.] and [E. K.] do, and each of them doth, by these presents constitute and appoint the said [P. W. L.], now or late of ——, merchant, the attorney of them the said [M. K.] and [E. K.], and each of them, for them and each of them, and in their, his, or her names or name, in the absolute discretion of the said attorney to call for, examine, settle, adjust, and sign all accounts now depending, or which may hereafter depend between them the said [M. K.] and [E. K.], or either of them, and the said [W. B.] [*the executor*], or any other person or persons whomsoever in relation to the real and personal estate late of the said [B. P. L.], or the trusts of the hereinbefore recited will, or in relation to any claims or rights whatsoever of the said [E. K.] or the said [M. K.] in her right as one of the next of kin of the said [E. B. P. L.], so far as relates to the share and interest late of the said [E. B. P. L.] of and in the real and personal estate of the said [B. P. L.] or the produce thereof, or in relation to any action, suit, proceeding, negotiation, agree-

Recitals: of mortgages, &c.; of desire to appoint attorney.

Testatum.

Appointment of attorney.

To settle accounts.

VII. To Receive Shares under a Will, and to Concur in Paying Off a Mortgage.

ment, security, release, or other matter or thing whatsoever connected with such real and personal estate, trusts, claims, or rights, And for them the said [M. K.] and [E. K.], or either of them, and in their, his, or her names or name, by all lawful ways and means to ask, demand, recover, and receive of and from all and every the persons and person liable to pay, transfer, deliver, or account for the same all and every sums and sum of money, stocks, funds, securities, and other property, now due and owing or payable, or which may hereafter accrue and become due and owing or payable to them the said [M. K.] and [E. K.] or either of them, either under or by virtue of the hereinbefore recited will, or otherwise on account of or in relation to the said real and personal estate late of the said [B. P. L.], or the produce and investments thereof respectively, or any of the trusts aforesaid, or any such claim or rights of the said [E. K.] as one of such next of kin as aforesaid, or any such matter connected therewith respectively as aforesaid; And to investigate, audit, and allow the accounts of the said [W. B.], or other the executors, trustees or trustee, or representatives for the time being of the said [B. P. L.]; And to pay off and discharge, or join or concur in and consent to the paying off or discharging of the hereinbefore recited mortgage, and any other charges and incumbrances which to the said attorney shall appear to charge or affect the said share and interest of the said [E. K.] or of the said [M. K.] in her right of or in the said premises or any part thereof; And upon the receipt, transfer, or delivery of any such sum or sums of money, stocks, funds, securities, or property, or of the balance thereof, which shall be left after paying off such mortgage, charges, and incumbrances as aforesaid, to give and execute sufficient releases and discharges for the same; And also to execute a general release to the said [W. B.], or other such executors or trustee and representatives as aforesaid, in relation to the said estates and premises; And to enter into any covenant to refund or account for any monies which may be paid to the said [M. K.] and [E. K.] or either of them, or on their account, or a due proportion thereof, in case the same shall be required for the payment or satisfaction of any just debts or engagements of the said testator which may hereafter be discovered or enforced; And also [*Power to institute and defend suits; to compound and*

To recover property to which principals entitled under will.

To examine executor's accounts.

To concur in paying off mortgage.

To give receipts.

To execute release to executor.

To covenant to refund.

arrange debts; to submit to arbitration; general words; power to appoint substitutes; agreement to ratify, supra, pp. 912, 913, 914].

In witness, &c.

VII. To Receive Shares under a Will, and to Concur in Paying Off a Mortgage.

VIII. *POWER of* Attorney *by an* Executor *residing* abroad *to* prove *a* Will *in this* Country.

In the High Court of Justice.
Probate Division.

TO ALL TO WHOM these presents shall come (*d*) [*principal*], late of, &c., but now residing at ——, in the kingdom of Italy, sends greeting; Whereas [*Recite will appointing principal to be executor, and death of testator*]: NOW THESE PRESENTS WITNESS that the said [*principal*] hereby appoints [*attorney*], of No. ——, Lincoln's Inn Fields, London, solicitor, to be the attorney of the said [*principal*], for him and in his name, or otherwise to appear before the Probate Division of her Majesty's High Court of Justice, or before some other court or judge of competent jurisdiction, and to apply for and procure letters of administration with the said will annexed, of the personal estate of the said [*testator*], deceased, to be granted and committed to him, but, nevertheless, for my use and benefit, and until I shall apply for and procure probate of the said will to be granted and committed to me; And, for that purpose, to execute such bond, covenant, or other obligation as shall be required upon the grant of such letters of administration as aforesaid; And generally, for me, and in my name, and on my behalf, to do, perform, execute and accomplish every other act, deed, matter and thing whatsoever, which my said attorney shall think necessary or proper to be done, for the

Recitals:

Testatum.

Appointment of attorney.

(*d*) Stamp, 10*s*.

VIII. By an Executor Abroad to Prove a Will in this Country.

purposes aforesaid, during my absence from England, as fully and effectually as I might or would do if personally present [*Power to appoint substitutes, and agreement to ratify, ante,* pp. 913, 914].

In witness, &c.

IX. *POWER of* Attorney *by a Feme Coverte,* Joint Administratrix *to, and one of the next of Kin of, an Intestate, with the concurrence of her* Husband, *to act in all* Matters *relating to the* Administration *of the* Intestate's Estate, *and to her beneficial Interest therein, during her* Absence Abroad.

TO ALL TO WHOM these presents shall come, the Honourable [A. G. R.] (commonly called Lord A. G. R.), a captain in her Majesty's Rifle Brigade, and [A. E.], his wife,

Recitals:

send greeting; Whereas [M. W. H.], late of, &c., spinster (one of the children of Sir H. W. H., deceased), died on or about the —— day of ——, 18—, intestate, and without having been married, and on the —— day of ——, 18—, letters of administration of her personal estate and effects were granted and committed to the said [A. E. R.] and to [J. E. P.] (wife of S. J. P., Esq.), two of her nieces and next of kin, by the Principal Registry of her Majesty's High Court of Justice, Probate Division; And whereas the said [A. G. R.] and [A. E.], his wife, are about to leave Great Britain, and are desirous of appointing proper persons as their attorneys, with such powers and authorities as may be necessary and convenient for enabling them or either of them, during the absence abroad of the said [A. G. R.] and [A. E.], his wife, or either of them, to represent and act for them and each of them in all matters relating to the personal estate late of the said [M. W. H.], deceased, and the administration thereof, and the beneficial interests of the said [A. G. R.] and [A. E.], his wife, respectively therein, or relating to any other claims

IX. By a Married Joint-Administratrix, to Act in the Administration.

or rights of the said [A. E. R.], as one of the next of kin of the said [M. W. H.], deceased, as fully and effectually and with the same absolute discretion in all respects as the said [A. G. R.] and [A. E.], his wife, or either of them, could act and do if they, he or she, were personally present: NOW THEREFORE, KNOW YE that for effectuating the purpose aforesaid, they, the said [A. G. R.] and [A. E.], his wife, in right of the said [A. E. R.], both as such administratrix as aforesaid, and also as such next of kin as aforesaid, and in respect of her beneficial interest in the estate of the said [M. W. H.], deceased, do, and each of them doth, by these presents appoint [J. W. N.], of, &c., and [I. S.], of, &c., jointly and each of them separately, the attornies and attorney of them the said [A. G. R.] and [A. E.], his wife, and each of them, for them or either of them, and in their, his or her names or name, in the absolute discretion of the said attornies or attorney, to call for, examine, settle, adjust and sign all accounts now depending or which may hereafter depend between them, the said [A. G. R.] and [A. E.], his wife, or either of them, and any other person or persons whomsoever, in relation to the personal estate late of the said [M. W. H.], deceased, or in relation to any claims or rights whatsoever of the said [A. E. R.], as one of such next of kin as aforesaid, or in relation to any action, suit, proceeding, negotiation, agreement, security or other matter or thing whatsoever connected with such personal estate, claims or rights, and for them the said [A. G. R.] and [A. E.], his wife, or either of them, and in their, his or her names or name (either conjointly with the said [S. I. P.] and [J. E.], his wife [*the other administratrix*] or separately), by all lawful ways and means to ask, demand, recover and receive of and from all and every the persons or person liable to pay, transfer, deliver or account for the same all and every sums and sum of money, stocks, funds, securities and other property now due and owing, or which may hereafter accrue and become due and owing to them the said [A. G. R.] and [A. E.], his wife, or either of them, whether by virtue of such letters of administration or beneficially as aforesaid, on account of or in relation to the said personal estate late of the said [M. W. H.], deceased, or any such claim or rights of the said [A. E. R.], as aforesaid, in any such matter connected therewith respectively as aforesaid; AND upon the receipt, transfer or delivery

Appointment of attornies.

To settle accounts.

To obtain property to which principal entitled.

To give releases.

IX. By a Married Joint-Administratrix, to Act in the Administration.

of any such sum or sums of money, stocks, funds, securities or property, to give and execute sufficient releases and discharges; And also to commence and prosecute, or concur and join in, any actions, suits or other proceedings at law or in equity or otherwise, in the names or name of the said [A. G. R.] and [A. E.], his wife, or either of them, either alone or jointly with any other person or persons, against any person or persons in respect of any of the matters or things aforesaid; And to appear to and defend any actions, suits or other proceedings to be commenced or prosecuted against the said [A. G. R.] and [A. E.], his wife, or either of them, either alone or jointly with any other person or persons, in relation to any of the matters or things aforesaid: And to proceed to judgment and execution, or become nonsuit, or suffer judgment to go by default, or confess judgment in any such actions, suits or other proceedings, or to compromise the same, as to the said attornies or attorney, or either of them, shall seem expedient; And also, if the said attornies or attorney, or either of them, shall deem it expedient so to do, to compound for any sum or sums of money or other debt or liability owing, or which may be owing to or from the said [A. G. R.] and [A. E.], his wife, or either of them, in respect of the said estate of the said [M. W. H.], deceased, or any of the matters and things aforesaid, and to accept part of such debt or liability so owing to the said [A. G. R.] and [A. E.], his wife, or either of them as last aforesaid, in discharge of the whole, or to accept a security by way of mortgage, charge, bond, covenant, bill of exchange, promissory note or otherwise for the whole or for part thereof in discharge of the whole; And to submit any dispute or disputes now pending, or which may hereafter arise, touching any of the matters and things aforesaid to arbitration, and to execute any bond, covenant or contract to regulate the terms of any such reference, and to abide by and perform the award or awards which shall be made thereon; And to enter into, conduct and conclude any other negotiation, contract, compromise or arrangement whatsoever in relation to any of the matters and things aforesaid which to the said attornies or either of them, in their or his absolute discretion, shall seem proper or expedient: And also [in the names or name of [A. G. R.] and [A. E.], his wife, or either of them] to do, perform and execute all such other acts, deeds, instruments, matters and

To bring actions.

To defend actions.

To compound.

To submit to arbitration.

General words.

IX. By a Married Joint-Administratrix, to Act in the Administration.

things whatsoever in relation to any of the premises as to the said attorneys or attorney, or either of them, shall seem proper or expedient; And generally to act in the management, arrangement and settlement of all the affairs, matters and things whatsoever relating to the personal estate of the said [M. W. H.], deceased, in such manner as they the said attorneys, or either of them, shall, in their or his absolute discretion, think expedient, and as fully and effectually in all respects as the said [A. G. R.] and [A. E.], his wife, or either of them, could have done if personally present; And also by any attested writing to substitute or appoint any person or persons to act under or in place of the said attorneys or attorney in all or any of the matters aforesaid, and every such substitution at pleasure to revoke, the said [A. G. R.] and [A. E.], his wife, hereby agreeing to ratify and confirm whatsoever the said [J. W. N.] and [I. S.], or either of them, or their or his substitute or substitutes, shall do or cause to be done in or about the premises by virtue of these presents; And it is hereby declared, that neither of the said attorneys shall be answerable for any act or default of the other of them or of any substitute, deputy, agent, banker or broker, into whose hands any property shall come under these presents, or for joining in any receipt for the sake of conformity, or for any monies or property which he shall not personally receive, or for any loss or misfortune whatever not arising from his own wilful default.

Power to substitute.

Agreement to ratify.

Indemnity clause.

In witness, &c.

X. *POWER of* ATTORNEY *to take out* ADMINISTRATION *of the* PROPERTY *of an* INTESTATE *in* INDIA, *and to* REALISE *the same* (*e*).

TO ALL TO WHOM THESE PRESENTS SHALL COME (*f*), [*principal*], of, &c., sends greeting: WHEREAS [A. B.], late

Recital of death of intestate, and kinship of principal.

To whom administration may be granted.

(*e*) By the Indian Probate and Administration Act V. of 1881, sect. 23, it is enacted as follows: "When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable to the case of such deceased, would be entitled to the whole or any part of such deceased's estate. When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them. When no such person applies, it may be granted to a creditor of the deceased." With regard to the persons entitled to the deceased's estate, the rule in India is the same as in England. It is enacted by the Succession Act X. of 1865, that "Succession to the immoveable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death. Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death." This enactment embodies rules of law with regard to succession which are of application in the United Kingdom and in most other civilised countries: see *Birtwhistle* v. *Vardill*, 7 Cl. & F. 895; *Enolin* v. *Wyllie*, 10 H. L. C. 1; and see *post*, tit. WILLS. The title to grants of administration of the estate and effects of a deceased person, as regards his immoveable property, wherever his domicile may have been; and as regards his moveable property, if he was domiciled in British India, is regulated by sects. 200–207 of the Act X. of 1865.

By the Act V. of 1881, sect. 30 (incorporating sect. 214 of the Act X. of 1865), it is enacted that: "When a person entitled to administration is case of intestacy is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person limited as before mentioned" (*i.e.*, until the principal shall obtain letters of administration for himself, see sect. 28). The attorney or agent applying for letters of administration must be within the jurisdiction of the Court: *In the goods of Nesbitt*, 4 Beng. L. R. App. 49. "Province," as defined in this Act, includes any division of British India having a Court of the last resort, see sect. 3; but it does not include Assam: *Thakoor Kristo Surma Adhikaree* v. *Basoobel Goshamee*, 12 W. R. 424.

With regard to the administration of the estates and effects in British India of testators who have died elsewhere, the Act V. of

(*f*) Stamp, 10*s*.

X. By Administrator to take out Administration of Intestate's Property in India.

of ——, died on the —— day of ——, 18—, at —— aforesaid, a bachelor and intestate, seised of and entitled to lands and hereditaments in the Province of ——, in British India, and the said [*principal*], as the eldest brother of the said [A. B.], and his sole next of kin (their father being dead), is by the acts in operation in British India, entitled to administer the moveable and immoveable property therein of the said [A. B.] deceased: NOW THESE PRESENTS WITNESS, that, in consideration of the premises, he, the said [*principal*], doth hereby appoint [*attorney*] the attorney of him the said [*principal*] for him, and in his name, or in the name of the said attorney, or otherwise, to take all usual and necessary steps to obtain from the proper Court or

Testatum.

Appointment of attorney;

to obtain administration;

1881, sect. 5, enacts that "When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the province, whether in the British Dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed." And where the executors are absent from the province, letters of administration, with such copy annexed, may be granted to their agent limited as in the case of an intestacy, see sect. 28. A power of attorney to obtain letters of administration with a copy of the will annexed should therefore be accompanied by an office copy of the will and act of probate exemplified under the seal of the Probate Division of the High Court of Justice.

Presumption as to powers of attorney.

With regard to the authentication of powers of attorney, the Act I. of 1872, sect. 85, enacts that "The Court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a notary public, or any Court, judge, magistrate, British consul, or vice-consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated."

The Powers of Attorney Act VII. of 1882, contains provisions with regard to powers of attorney by married women, the deposit of original instruments creating powers of attorney, the execution of instruments under powers of attorney, and payments by an attorney under a power without notice of the death, &c., of the principal, which are almost identical with the recent statutory enactments set out and considered in the foregoing dissertation: see *ante*, pp. 861, 874, 884, and 902.

Persons holding general powers of attorney from parties out of the jurisdiction of the Indian Courts, are recognised as agents of such parties for the purpose of entering appearances and making applications, &c., in such Courts on behalf of their principals: see Act XIV. of 1882, sects. 36, 37.

As to the registration of powers of attorney and other assurances intended to operate in British India: see the Registration Act VIII. of 1871.

X. By Administrator to take out Administration of Intestate's Property in India.

Courts, office or offices in British India, letters of administration limited to the moveable and immoveable property of or to which the said [A. B.] died possessed or entitled in British India; and for him the said [*principal*], and in his name, or otherwise, to give, make, enter into, and execute, every such bond, covenant, or other obligation, as shall be required upon the grant of such letters of administration, the said moveable and immoveable property as aforesaid, or in anywise about the premises, and generally to do all things necessary or expedient for obtaining such letters of administration as aforesaid, or for constituting the said [*principal*] or the said [*attorney*] as his attorney, the administrator of the said moveable and immoveable property, and the legal representative of the said [A. B.] in British India: And also if and when letters of administration of the moveable and immoveable property of the said [A. B.] shall have been obtained, absolutely to sell and dispose of the lands, tenements, and hereditaments which shall form part of the real estate of the said [A. B.] as aforesaid, either together or in parcels, and either by public auction or private contract; And upon any such sale, to buy in or rescind any contract for sale, and to resell without being responsible for any loss occasioned thereby, and to make any such sale as aforesaid, subject to such special or other conditions of sale as the said [*attorney*] shall consider advisable or expedient; and to give credit for the whole or any part of the purchase-money upon such security as the said [*attorney*] shall think proper; and to get in, recover, and receive all debts, whether secured or otherwise, due or owing to the estate of the said [A. B.] in British India, and upon payment of any monies owing to the said estate on mortgage or other security, to execute such reconveyances or releases of the property so mortgaged or charged as may seem proper or expedient; and to pay and discharge all debts and liabilities due or owing from the estate of the said [A. B.] to the Government of British India, or to any person, firm, company, or corporation in British India; And for the purposes aforesaid, or any of them, to execute and do all such contracts, conveyances, assurances, releases, deeds, matters, and things as the said [*attorney*] shall deem expedient; And the said [*principal*] doth hereby declare, that every receipt in writing of the said [*attorney*] for any money paid to him under these presents, or in the execution of the

to execute bonds, &c.;

to sell the estate;

to execute conveyances;

to give receipts for purchase-monies;

X. By Administrator to take out Administration of Intestate's Property in India.

powers hereof, shall sufficiently discharge the person or persons paying the same therefrom, and from being concerned to see to the application, or being answerable for the loss or misapplication thereof; And the said [*principal*] hereby further authorises and empowers the said [*attorney*], in the name of him the said [*principal*], or otherwise, to commence, prosecute, abandon, defend, and compromise in any court of law, equity, or other judicature in the said colony of ——, or to refer to arbitration all or any proceedings or claims touching the property and liabilities of the said [A. B.] deceased, in British India, or any of the matters aforesaid; And also until the sale and conversion into money of the whole of the said premises, to manage and deal therewith as the said [*attorney*] shall think fit, and to appoint agents and employ servants for the purposes aforesaid, or any of them, on such terms and with such salaries, wages, and allowances as the said [*attorney*] shall deem proper; And the said [*principal*] doth hereby further authorise and empower the said [*attorney*], in the name of him the said [*principal*], and as his act and deed, to acknowledge this present power of attorney, and to register and record the same in the proper office, and to execute, make, and do, every such other deed, act, matter, or thing whatsoever, which may be necessary or expedient for the purpose of giving validity or effect to this present power of attorney, according to the laws and usages of British India, or of any part thereof; And generally for the said [*principal*], and in his name or otherwise, to do everything requisite or convenient for all or any of the purposes aforesaid, as fully and effectually as the said [*principal*] himself could do if personally present; And the said [*principal*] hereby ratifies, confirms, and allows and covenants to ratify, confirm, and allow, whatsoever the said [*attorney*] shall do or cause to be done in or about the premises, by virtue of these presents.

to bring and defend actions;

to manage estate till sale;

to register the power.

General words.

Agreement to ratify.

In witness, &c.

XI. *POWER of* ATTORNEY *by two* DEVISEES *and* EXECUTORS *in* ENGLAND, *authorising certain Persons in a Colony to* TAKE POSSESSION *of and* RECEIVE *the* PROPERTY *and* DEBTS *of the Testator there* (*g*).

TO ALL TO WHOM THESE PRESENTS SHALL COME (*h*) [*principal*] of &c., and [*principal*] of &c., send greeting; WHEREAS [A. B.] late of &c., deceased, duly made and executed his will dated the —— day of ——, 18—, and thereby devised all his real estate whatsoever and wheresoever to the said [*principals*] their heirs and assigns upon the trusts therein mentioned, and appointed the said [*principals*] to be the executors of his said will: AND WHEREAS the said [A. B.] died on the —— day of ——, 18—, without having revoked or altered his said will and the same was on the —— day of ——, 18—, duly proved in the Principal Registry of Her Majesty's High Court of Justice, Probate Division, by the said [*principals*]: AND WHEREAS part of the real estate of the said [A. B.] is situate in or about —— in the Colony of —— and part of his personal estate is there outstanding. NOW THESE PRESENTS WITNESS that the said [*principals*] do, and each of them doth, hereby appoint [*attorneys*], of &c., and any one or more of them, jointly and severally, the attorneys and attorney of them and each of them, for them and each of them, and in the names and name of them and each of them, as such devisees and executors as aforesaid, or in the names or name of the said attorneys, or any one or more of them, or otherwise as the case shall require, to take all usual and necessary steps to obtain from the proper Court or Courts in the Colony of —— aforesaid letters of administration with the said will of the said [A. B.] annexed, limited to the moveable and immoveable property of or to which the said [A. B.] died possessed or entitled in the said Colony: And for them the said [*principals*] and in their names or otherwise [*to execute bonds*, &c., at *ante*, p. 932]; And if

Recitals: of will appointing principals trustees and executors thereof;

of death of testator, and probate of will;

that part of property is in the colony.

Testatum.

Principals, as devisees and executors; appoint attorneys jointly and severally.

To obtain administration with the will annexed.

(*g*) Stamp, 10*s*.

(*h*) The above power may be adapted with slight alteration to the case of property in India or in any foreign country.

An English will is proved in British India by production of an office copy of the will and act of probate exemplified under the seal of the Probate Division: see *ante*, p. 930, note (*e*).

XI. **By Executors to take Possession of Property, &c.**

and when letters of administration of the moveable and immoveable property of the said [A. B.] shall have been obtained, to demand, take and receive possession and seisin of all and every the plantations, lands, hereditaments, and real and personal estate whatsoever, in ——, now vested in or belonging to said [*principals*], as the real and personal representatives of the said [*testator*], deceased, or wherein or whereto they as such devisees and executors as aforesaid, or otherwise howsoever, or either of them have or has any estate, right, title or interest. And also of all live and dead stock, utensils and implements to the said plantations, lands and hereditaments, or any of them, belonging or appertaining, and to take upon themselves or himself the whole management or direction thereof; and to receive and take the rents, issues and profits thereof, and of every part thereof, and to pay and defray all necessary charges and expenses in and about the said several plantations and premises, and the supplying and keeping up the stock thereof respectively, and to remit and consign to them the said [*principals*] the produce and profits thereof, or otherwise to dispose thereof in such manner as they shall from time to time direct; And also, for them the said [*principals*], as such devisees and executors as aforesaid, or otherwise, to ask, demand, sue for, recover and receive of and from all and every persons and person in or belonging to —— aforesaid, whom it doth or shall or may concern, all arrears of rent and sums of money, debts, goods, merchandise and effects whatsoever, now due, owing and payable, or belonging, or which shall or may at any time or times hereafter become due, owing, payable, or belonging to them the said [*principals*], as such devisees and executors as aforesaid, or otherwise howsoever, or either of them; And upon receipt thereof, or any part thereof, for them or either of them, and in the names or name of them or either of them, or in the names or name of the said attorneys or any one or more of them, or otherwise to sign, seal, execute and deliver such releases, acquittances, or other sufficient discharges, as shall be thought requisite in that behalf; And also to examine, settle, adjust and balance all accounts which now are, or shall or may at any time hereafter be open or depending between the said [*principals*], as such devisees and executors as aforesaid, or either of them, and any other person or persons in or belonging to the said colony, and to receive and pay (as

To take possession of testator's real and personal estate in the colony.

And to receive the rents and pay all charges.

Also to receive and recover debts owing to the testator.

And to give discharges.

To adjust accounts.

XI. By Executors to take Possession of Property, &c.

the case may require) the balances thereupon found due; And also to compromise or refer to arbitration, or otherwise compound all or any matters in difference between the said [*principals*], as such devisees and executors as aforesaid, or either of them, and all and every other person and persons whomsoever, in or belonging to the said island, and to perform and fulfil such award or awards, agreement or agreements, as shall be thereupon made; And generally to do, perform and execute all such further and other acts, deeds, matters and things as shall be requisite or necessary in or about the premises, or any part thereof, in as full, effectual and beneficial a manner, as the said [*principals*], or either of them, might or could do, if they were personally present. [*General words, power to appoint substitutes and Agreement to ratify, supra*, p. 913, 914. *Appointment of another attorney in case of the death of the first, supra*, p. 915.]

To compromise and refer to arbitration.

General words.

In witness, &c.

XII. *POWER of* Attorney *by Persons interested under a foreign Will (of whom some are* Married Women *and others* Infants*), to concur in winding up the Testator's Affairs, and to take the Steps necessary to secure for the Constituents their respective Shares in the Estate.*

TO ALL TO WHOM these presents shall come (*i*) [A. B.], of, &c. [C. B.], of, &c. [E. F.], of, &c., and [F.], his wife, [K. L.], of, &c., and [L.], his wife, [Q. R.], of, &c., and [O. R., R. R., S. R.], and [T. R.], the infant children of the said [Q. R.], send greeting: Whereas [I. B.], theretofore, of, &c., but then residing at Malaga, in Spain, duly made his will, dated, &c., and thereby [*recite will making several devises and bequests, and giving the residue of the testator's real and personal estate to his surviving brothers and sisters in equal shares, with reversionary interests to his*

Recitals: of will;

(*i*) Stamp, 10*s*.

nephews and nieces, and appointing [L. M.] *and* [N. O.], *of Malaga, his executors*]: AND WHEREAS the said testator died on the —— day of ——, without having revoked or altered his said will, and the same was registered in the British Consulate, at Malaga, on the —— day of ——: AND WHEREAS the said [A. B., C. B., F. F.], and [L. L.], and [G. H.], deceased were the only brothers and sisters of the said [I. B.] living at his decease; AND WHEREAS the said [G. H.] died on, &c., a widow and intestate, leaving only one child [P.] her surviving, who married the said [Q. R.], and died on, &c., intestate, leaving the said [Q. R.] and four children only, [O. R., R. R., S. R.], and [T. R.], born respectively in the month of ——, 1872, in the month of ——, 1874, in the month of ——, 1876, and in the month of ——, 1878, and now living, her surviving: AND WHEREAS the only nephews and nieces living at the death of the said testator, or since born, are the said [O. R., R. R., S. R.], and [T. R.]. NOW THESE PRESENTS WITNESS, that they the said [A. B., C. B., E. F., K. L.], and [Q. R.] (hereinafter referred to as "the constituents") do, and each of them doth, hereby appoint [S. T.], of Malaga aforesaid, to be the attorney of them the said several constituents respectively, and of every of them, and of the said [F. F.] and [L. L.], the said wives of the said [E. F.] and [K. L.] respectively, and of the said [O. R., R. R., S. R.] and [T. R.], the said infant children of the said [Q. R.] respectively, for them the same several constituents, married women and infants respectively, and as their respective acts and deeds, and in their respective names, or as the act and deed, and in the name of the said [*attorney*], or otherwise as to the same [*attorney*] may seem meet, to concur in and assent to the final liquidation and division of and all other matters concerning the estate of the aforesaid [*testator*]; And especially to examine and inspect all deeds, documents, and papers connected with the said estate, and to inspect and check all the accounts and acts of the said executors of the said [*testator*], and to approve such as may be found correct, or to reject and claim the reform of such items as may be objected to by the said attorney; And to sign, seal, and deliver, or otherwise execute, make and perfect the deed of partition of the said estate, or of the net residue thereof, on the final liquidation and division of the said estate, if such deed be found to be in accordance

XII. **To Concur in Winding-up the Affairs of a Foreign Testator.**

of death of testator;

of state of family, &c.

Testatum.

Appointment of attorney.

To concur in liquidation and division of estate.

To examine documents.

To check accounts of executors.

To execute deed of partition.

XII. **To Concur in Winding-up the Affairs of a Foreign Testator.**

with the will of the said [*testator*], or otherwise to demand such variation of the said deed as the said attorney may think necessary or expedient; And also in the names and on behalf of the said several constituents, married women and infants respectively, or in the name of the said attorney or otherwise, and by all or any legal or effectual means, to

To recover from executors effects forming part of estate.

recover and receive and accept possession, transfer and payment of and from the executors of the said will, and either of them, and all and every, or any other persons or person whomsoever, all monies, credits, documents, titles, interest, dividends, goods, chattels, and effects whatsoever, which now do or hereafter shall belong to or constitute part of the estate of the said [*testator*], or the interest, dividends or income thereof, or which have arisen or shall arise from the

To examine and settle accounts between testator's estate and his late partners.

liquidation or realisation thereof; And also to examine, state, settle, liquidate, and adjust all accounts now depending, or which hereafter may arise or require settlement, between the said estate of the said [*testator*] and any person or persons with whom he was engaged in partnership at his death, or any other person or persons; And upon the recovery, delivery, transfer, and receipt of all and every or any monies, goods, chattels, effects, or things belonging, due, owing, or payable to the estate of the said [*testator*], or produced by the liquidation or realisation thereof as aforesaid, for them the said several constituents, married women and infants respectively, and in their names respectively, and as their respective acts and deeds, or in the name of the said attorney, and as his act and deed, or otherwise as he shall

To give receipts.

think fit, to sign, seal, execute, and deliver such good and sufficient receipts, releases, acquittances, discharges, and

To bring suits.

other documents as shall be requisite or convenient; And also, if need be, in case of neglect, refusal, or delay on the part of the said executors, or of any other person, persons, or company, to make and render just and true account, payment, delivery, transfer, and satisfaction in the premises, them or any of them thereunto to compel, and for that purpose, in the names of the said constituents, married women and infants, or in the name of the said attorney, or otherwise, to make such claims and demands, and commence and sue, and prosecute to judgment and execution, or abate and cease to prosecute, such actions and suits at law as the said

To appear in Court.

attorney shall think fit; And also to appear before any

judge, magistrate, consul, or officer in any court of judicature or elsewhere, and to sue, plead, answer, and defend in all matters and causes concerning the premises; And also in case of any difference or dispute with any partner or partners of the said [*testator*], or any other person or persons, or with any company, concerning any of the matters aforesaid, to submit all or any such differences or disputes to arbitration, in such manner as the said attorney shall think fit; And in case the whole or any such debt or sum of money, chattels, or property due, payable, owing, or belonging to the estate of the said [*testator*], probably cannot, in the judgment of the said attorney, be recovered, to compound, compromise, and accept of part thereof, or any payment or delivery in respect thereof, in lieu of and in full satisfaction for the whole thereof; And in any case to grant time for the payment, delivery, or transfer of any such debt, sum of money, chattels, or property as aforesaid, or of any composition accepted in lieu or satisfaction thereof as aforesaid, either with or without taking security, and generally to act in respect thereof in such way and manner as to the said attorney shall appear to be most expedient; And also either by public auction or private contract, and generally in any manner and subject to any conditions the said attorney shall think fit, and at such time or times and in such place or places as he shall deem proper, to sell, dispose of, and convert into money all and singular the shares, goods, chattels, and effects which now do or shall hereafter constitute or belong to the estate of the said [*testator*], and to receive the consideration money for the sale, disposition or conversion thereof, and to concur with the said executors for all or any of the same purposes; And to enter into any agreement or composition with every or any person to whom the estate of the said [*testator*] is or shall be indebted, or shall be alleged to be indebted, or who shall make any claim or demand upon the said estate touching the payment or satisfaction of his or her debt, claim, or demand, or any part thereof, and to execute and give to every or any such person any security or securities for the payment or satisfaction of his or her debt, claim, or demand, or any part thereof, under and subject to such terms and conditions as the said attorney shall think reasonable and proper; And to allow any such debt, claim, or demand wholly or partially upon any evidence the said

XII. To Concur in Winding-up the Affairs of a Foreign Testator.

To submit to arbitration.

To compromise.

To give time for payment, &c.

To sell.

To arrange with creditors of estate.

And give them security.

XII. To Concur in Winding-up the Affairs of a Foreign Testator.

attorney shall think proper; And further, for the said constituents, married women and infants in their names and as their acts and deeds, or in the name of the said attorney and as his act and deed or otherwise, to sign, seal, and deliver, or otherwise make and perfect all such acts, deeds, and assurances as shall be required, or as the said attorney shall see fit, for all or any of the purposes aforesaid, and to sign and give receipts and discharges for all or any the monies, goods, chattels, and effects which shall be paid or delivered to or come to the hands of the said attorney, and such receipts, whether given in the names of the said constituents, married women and infants or any of them, or in the name of the said attorney or otherwise, shall effectually discharge the persons or person paying or delivering such monies, goods, chattels, and effects from the same respectively, and from all responsibility as to the application thereof; And generally for them the said constituents, married women and infants, and in their names and as their acts and deeds, or in the name of the said attorney, and as his act and deed or otherwise as he shall think fit, to do, perform, execute, and accomplish every act, deed, matter, and thing which shall or may be requisite or convenient for all or any of the purposes aforesaid, as fully and effectually as the said constituents might or could do if personally present; And to substitute and appoint one or more attorney or attorneys under him the said [*attorney*], or in his place and stead, with the same powers as or with more limited powers than are expressed to be hereby given, and such substitute or substitutes at pleasure to remove, and another or others to appoint; And they the said constituents do and each of them doth hereby ratify and confirm, and jointly and severally covenant to ratify and confirm, whatsoever the said [*attorney*] or his substitute or substitutes shall do or cause to be done in or about the premises by virtue of these presents, including in such confirmation whatever shall be done between the time of the decease of all or any of the said constituents, married women and infants, or the revocation by other means of these presents, and the time of such decease or revocation becoming known to the said [*attorney*] or his substitute or substitutes; And they the said [E. F.] and [K. L.] hereby severally further declare that their aforesaid wives respectively concur in these presents, and in granting the several powers expressed to be hereby given,

To execute deeds.

To give receipts.

General words.

Power to substitute.

Agreement to ratify.

Declaration as to concurrence of wives of husband-constituents.

with the consent of them the said [E. F.] and [K. L.] respectively.

In witness, &c.

XII. To Concur in Winding-up the Affairs of a Foreign Testator.

XIII. *POWER of* Attorney *executed by* Trustees for Sale *of an Estate in Jamaica, to certain Merchants resident there, to* enter upon *and* dispose of *the Trust Property pursuant to the* Trusts *of the Deed, which contained an express Authority to appoint Attorneys for the Purpose.*

TO ALL TO WHOM these presents shall come (*k*), [A. B.], of, &c., and [C. D.] and [E. F.], both of, &c., send greeting: Whereas, by an indenture dated, &c., and made between [P. Q.], of the first part; [R. S.], of the second part; and the said [*principals*], of the third part; all that plantation and sugar-work, called by the name of ——, and the lands thereunto belonging, situate in the parish of, &c., in the island of Jamaica, and all mills, mill-houses, boiling-houses, curing-houses, still-houses, and all other edifices and buildings on the said plantation and lands, or any part thereof erected, and also all and every the horses, mules, cattle, and other live stock, coppers, stills, worms, worm-tubs, ladles, skimmers, drips, pots, pans, wains, waggons, plantation-utensils, and implements for planting, upon and belonging to the said plantation and sugar-work, with the appurtenances, were conveyed and assured unto and to the use of the said [*principals*], their heirs and assigns; Upon trust that they, the said [*principals*], or the survivors or survivor of them, or the heirs of such survivor, should concur with all proper parties in selling the said hereditaments and premises, either together or in parcels, by public auction, or private contract, for such price or prices as could be reasonably obtained for

Recital of conveyance in trust for sale.

(*k*) Stamp, 10*s*.

XIII. By Trustees for Sale, under an Express Authority to appoint Attorneys.

the same; and should, upon payment of the purchase-money or purchase-monies, concur with all proper parties in assuring the said hereditaments and premises, or such part or parts thereof as should be so sold, and the fee-simple thereof respectively, to the purchaser or purchasers, his, her, or their heirs and assigns; and should, in the meantime, and until such sale or sales should be made as aforesaid, receive and take all the rents, profits, and produce of the said premises, and should dispose of the money arising from such sale or sales, and from the said rents, profits, and produce, as in the said indenture of release mentioned; and it was thereby declared, that the receipt or receipts in writing of the said [*principals*], or the survivors or survivor of them, or the heirs or assigns of such survivor, or their or his attorneys or attorney, should be a sufficient discharge or sufficient discharges to the said purchaser or purchasers, who should not be liable to see to the application of the purchase-money, which in and by such receipt or receipts should be acknowledged to be received: AND in order to facilitate such sale or sales as aforesaid, it was by the said indenture expressly declared and agreed, that it should be lawful for the said [*principals*], and the survivors and survivor of them, and the heirs of such survivor, from time to time as occasion should require, to nominate and appoint by writing under their or his respective hands and seals, or hand and seal, one or more attorney or attorneys in Jamaica, for the purpose of joining in such sales as are thereby authorised and directed, and for carrying into execution the said trusts thereby created: NOW THESE PRESENTS WITNESS, that the said [*principals*], as such trustees as aforesaid, Do, and each of them Doth, by these presents, constitute and appoint [*three attorneys*], of, &c., or any two or one of them, jointly and severally to be the attorneys and attorney of them the said [*principals*], as such trustees as aforesaid, and of the survivors and survivor of them, for and in the names or name of them the said [*principals*], as such trustees as aforesaid, or the survivors or survivor of them, to enter upon, and by all lawful means take possession of the said plantation and sugar-work, cattle, stock, plantation-utensils, and implements of planting, lands, tenements, and hereditaments, and the same to order, manage, and cultivate, and to receive and take the rents, profits, and produce thereof, and the same to ship and remit to Great

Receipts by trustees, or their attorneys, to discharge purchasers.

Power to nominate attorneys, to carry into execution the trusts of the deed.

Testatum.

Appointment of attorneys—

To enter upon plantation, &c.

To manage same, and remit produce.

XIII. By Trustees for Sale, under an Express Authority to appoint Attorneys.

Britain, or otherwise dispose of as they the said [*principals*], or the survivors or survivor of them, shall from time to time direct; And also for and in the names or name of them the said [*principals*], as such trustees as aforesaid, or the survivors or survivor of them, to ask, demand, recover, and receive all and every sums and sum of money, debts, dues, claims, and demands whatsoever, in the said island of Jamaica, which now are or is, or hereafter shall be due, owing, or belonging unto them the said [*principals*], as such trustees as aforesaid, or the survivors or survivor of them, in respect, or on account of the rents, profits, and produce of the said plantation and sugar-work, lands, tenements, hereditaments, and premises; And upon receipt thereof, or of any part thereof, to give and execute receipts, releases, or other sufficient discharges for the same; And on non-payment thereof, or of any part thereof, to sue for the same, and to levy, maintain, and take all such legal and proper executions, suits, and means, for recovery thereof, as may be necessary; [And also to appear for them the said [*principals*], or the survivors or survivor of them, and them or him to represent in any court or courts of law or equity in the said island of Jamaica, and there to answer and defend any action or actions, suit or suits, brought or to be brought against them or any of them, touching or concerning the premises.] And the said [*principals*], as such trustees as aforesaid, Do, and each of them Doth, hereby further authorise and empower the said [*attorneys*], or any two or one of them, for and in the names or name of them the said [*principals*], as such trustees as aforesaid, or the survivors or survivor of them, to carry into execution the several trusts in them or him expressed to be reposed by the said indentures of lease and release, and for that purpose to sell and dispose of and concur with all proper parties in making sale and disposal of the said plantation and sugar-work, horses, mules, cattle, stock, lands, tenements, hereditaments, and premises, comprised in the said indentures of lease and release, either together or in parcels, and by public auction or private contract, to any person or persons, for such price or prices as can be reasonably had for the same; And also for them the said [*principals*], as such trustees as aforesaid, or the survivors or survivor of them, in their or his names or name, to sign, seal, and deliver all such conveyances and other deeds and assurances as shall be requisite for con-

To receive and recover rents and produce.

To give receipts.

To prosecute or defend actions.

Also to carry into execution the trusts of the recited indenture.

To sell plantation, &c.

And execute conveyances.

XIII. By Trustees for Sale, under an Express Authority to appoint Attorneys.

veying and assuring the said plantation and sugar-work, horses, mules, cattle, stock, lands, tenements, hereditaments, and premises, with their and every of their issue and appurtenances, or such part or parts thereof as shall be so sold, and all the estate, right, and interest of them the said [*principals*] therein or thereto, unto the respective purchaser or purchasers of the same, his or their heirs and assigns, or as such purchaser or purchasers shall reasonably require, and sign and give to such purchaser or purchasers an effectual receipt or effectual receipts, for his or their purchase-money or respective purchase-monies: And generally to do, perform, and execute all other acts and things which shall be requisite in or about the premises, as fully and effectually as they the said [*principals*], or the survivors or survivor of them, might or could do if personally present; they the said [*principals*] hereby ratifying and confirming and agreeing to ratify and confirm, whatsoever the said [*attorneys*], or any one or more of them, shall do or cause to be done in or about the premises by virtue of these presents.

To give receipts for purchase-money.

General words.

Covenant to ratify.

IN WITNESS, &c.

XIV. *POWER of* ATTORNEY *by a* TRUSTEEE *of a* BENEFIT BUILDING SOCIETY *to his* CO-TRUSTEES *to act for him while abroad in the* AFFAIRS *of the* TRUST.

KNOW ALL MEN BY THESE PRESENTS (*l*), that I, [A. B.], of, &c., being one of the trustees of the —— Benefit Building Society, in whom many mortgages and securities belonging to the said society are vested, and being about to leave England for a short time, Do hereby nominate and appoint [C. D.], [E. F.], and [G. H.], who are the other three trustees of the said society, and any two or one of them, to be my attorneys and attorney during my absence from

Appointment of attorneys.

(*l*) Stamp, 10*s*.

XIV. By a Trustee of a Benefit Building Society.

England, and also after my return to England, until I shall notify such return by writing under my hand, directed and delivered to and left at the office of the said society for the secretary of the same society, for me and in my name, as such trustees as aforesaid, to receive or join in receiving any monies which are or shall be payable to the trustees of the said society, and to sign and give valid receipts and discharges for the same and for any other monies which shall be duly paid to the proper officer or bankers of the said society, and for which the trustees of the said society can or might give a discharge; And to sell, convey, assign, surrender, release, appoint, transfer or otherwise secure or deal with any freehold, copyhold, customary or leasehold hereditaments, or other property of any nature which is or may be vested in me jointly with the other trustees of the said society as such trustees, or over which I with the said other trustees have any power of disposition in that character; And for me and in my name to sign, seal, and deliver any deeds, instruments, and writings whatsoever relating to any of the affairs of the trusteeship, and to represent me in the said trusteeship, and in their or his absolute discretion for me and in my name to do any acts in relation thereto, which I could do if personally present; And further, in case it shall be deemed expedient by my said attorneys or any two of them so to do, for me and in my name to resign and sign any acknowledgment of my resignation of the office of trustee of the said society, in order that another trustee may be appointed in my place; And whatsoever the said attorneys or attorney shall do in accordance with the terms and meaning of these presents, I do hereby ratify and confirm, and agree further to ratify and confirm.

To receive trust-monies.

To give receipts.

To deal with trust property.

To execute deeds relating to trusteeship.

To resign the principal's trusteeship.

Agreement to ratify.

In witness, &c. (*m*).

(*m*) In the case in which this power was drawn, the trustees were not expressly authorised to appoint an attorney. Accordingly, though the attorney-trustees might convey the legal estate in the trust-premises, as regards the *cestui que trust* all acts done under the power would be void in equity (*vide supra*, p. 881), unless, of course, they were subsequently ratified. Such ratification was, no doubt, obtained at the next meeting of the society.

XV. *POWER of* ATTORNEY *from a* PERSON *having large Estates in England, previously to his going abroad, containing very* EXTENSIVE *and special* POWERS *to* DEMISE *and* MANAGE ESTATES, APPOINT BAILIFFS, EXERCISE POWERS OF ENTRY, &c., IN LEASES, PROCEED AGAINST TENANTS, &c.; COLLECT RENTS, SETTLE DEBTS, BRING ACTIONS, REFER TO ARBITRATION, SELL, MORTGAGE, *or* CHARGE *the* ESTATES *in Great Britain, and in Saint Vincent, and* GRANT ANNUITIES *and* OTHERWISE *to* ACT *in his* CONCERNS.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*n*), I, [*principal*], late of the island of Saint Vincent, but now of ——, in the county of ——, in England, esquire,

Recitals.

send greeting: WHEREAS I, the said [*principal*], am seised and possessed of or otherwise entitled to certain freehold and leasehold farms, lands, and hereditaments, and other personal estate and effects in England, and several persons residing in England are indebted to me in various sums of money: AND WHEREAS I am now about to leave England and to reside in ——, and am desirous of appointing a proper person as my attorney, with such powers and authorities as may be necessary or convenient for enabling him, during my absence from England, to manage and conduct my property and affairs as effectually as if I were personally present: NOW THEREFORE KNOW YE, that, for effectuating the purpose aforesaid, I, the said [*principal*], hereby appoint [*attorney*], of, &c., esquire, my attorney for me, and in my name and on my behalf, to take possession of, let and demise, or, if he shall think proper, to keep in his own hands, manage, cultivate, and improve my freehold and leasehold messuages, farms, lands, and hereditaments, in —— and elsewhere in Great Britain, and from time to time to appoint any bailiff, stewards, or agents, to assist him in managing the same, with such salaries or allowances as he shall think reasonable; and from time to time to displace or remove the persons so appointed, or any person or persons now acting in any such capacity or capacities, and another or others to appoint; and also for the

Testatum.

Appointment of attorney.

To let estates and grant leases.

(*n*) Stamp, 10*s*.

purposes aforesaid, or any of them, in my name and on my behalf, to execute and do all such assurances and things as he my said attorney shall think expedient for granting, demising, or letting all or any of the said freehold and leasehold messuages, farms, lands, and hereditaments, in consideration of any fine or fines or without fine, and under and subject to such conditions, rents, covenants, and agreements, as my said attorney shall think fit; AND ALSO by virtue of any powers reserved to me in and by any leases under which the said premises may from time to time be held, or otherwise, to enter into and upon the said premises or any part thereof, to view and examine the state and condition thereof, and give the proper notices and directions respecting the repairs and cultivation of the same; or, if my said attorney shall deem expedient, by entry or otherwise wholly to determine and make void any such lease or leases by virtue of any power or powers therein contained, and generally to exercise all or any other powers, rights, and privileges, reserved to me in and by any such leases; AND ALSO from time to time, for me and in my name or otherwise, to receive and recover all the rents and profits which now are or hereafter shall be due, owing, or arising for or in respect of my said freehold and leasehold estates in Great Britain (making such allowances and deductions thereout as may lawfully or reasonably be claimed); AND ALSO all other sums of money, securities for money, legacies, debts, goods, chattels, and personal effects and things whatsoever (*o*), of or to which I am now or hereafter shall be entitled to; and upon receipt or delivery of the said rents, arrears of rent, issues and profits, sums of money, debts, legacies, goods, chattels, effects and things, or any of them, or any part or parts thereof respectively, to give sufficient receipts for the same; AND in case of non-payment of all or any part or parts of the said rents, arrears of rent, issues and profits, or the non-payment or non-delivery of all or any of the said sums of money, debts, legacies, goods, chattels, effects, and things, or any part or parts thereof respectively, for me and in my name, or otherwise, to enter and distrain for all or any part of the said

XV. **To Lease, Charge, and Sell Estates, and Pay Debts, Raise Money by way of Annuity, &c**

To enter by virtue of powers in leases.

To determine leases.

To receive rents.

And all other debts and effects.

To give discharges.

In case of non-payment of rent to distrain.

(*o*) This power will not enable the attorney to receive dividends on stock in the public funds, for which a power must be obtained at the Bank of England.

XV. To Lease, Charge, and Sell Estates, and Pay Debts, Raise Money by way of Annuity, &c.

rents or arrears of rent, and to commence such actions or suits at law or in equity, or other proceeding or proceedings, as my said attorney shall deem proper to compel the payment or delivery of all or any of the said rents, arrears of rent, issues and profits, sums of money, debts, legacies, goods, chattels, effects, and things, or any part or parts thereof respectively, or to enforce the performance of any covenant or covenants contained in any indenture of lease, granted or to be granted, of my said estates, or any part thereof, or to recover the possession of the said estates or any part thereof; and the same actions or suits respectively to prosecute or to discontinue, and become nonsuit or otherwise to act therein as my said attorney shall deem expedient; AND ALSO to state and finally settle and adjust all accounts, reckonings, and demands whatsoever, between me and any person or persons whomsoever, and to receive the balance or balances thereof, if any; And upon settling or adjusting such accounts respectively, and payment of such balances, acquittances, releases, and other discharges, from time to time to make, execute, and give for the same respectively; And in case of refusal or non-payment of all or any part or parts of any balance or balances that shall happen to be due to me, to compel the payment thereof by all or any of the ways or means aforesaid; And also, in case any person or persons who is, or are, or shall be indebted to me, shall become a bankrupt or bankrupts, to prove such debt or debts and receive the dividend or dividends payable in respect thereof; and for me and in my name, or otherwise, to sign the certificate or certificates of any such bankrupt or bankrupts; And also to compound, compromise, and submit to arbitration and adjust all debts, claims, demands, and disputes subsisting or to arise between me and any other person or persons whomsoever; And for that purpose to execute and do all such instruments and things as the said [*attorney*] shall think expedient; AND ALSO to appear for me the said [*principal*] in any court of law or equity to any action, bill, suit, information, or complaint, that is or shall be brought, commenced or prosecuted against me, or whereunto I shall be a party, and to defend the same, or therein to suffer judgment or decree to be had, given, taken, or pronounced against me by default or otherwise, as my said attorney shall think proper; And also, for me and in my name, or otherwise, and on my behalf, to enter into any agreement with any person or

And commence actions for rents or other monies.

To settle accounts.

And recover balances.

To prove debts in bankruptcy.

To compound debts and refer to arbitration.

To appear to and defend actions.

To make arrangements with creditors.

persons to whom I am or shall be indebted, touching the payment or liquidation of his or their debt or respective debts, or any part thereof respectively; And to execute and give to any such person or persons any security or securities, real or personal, on any part of my estate and effects in Great Britain, for the payment of his or their debt or respective debts, or any part or parts thereof respectively [either with or without interest, by instalments or otherwise, at such time or respective times, and] under and subject to such terms, conditions, stipulations, and agreements of any nature soever, as my said attorney shall think reasonable or proper; And also, for me and on my behalf, to borrow and take up at interest, upon any security, real or personal, any sum or sums of money my said attorney shall think proper; And for the purpose of securing any debt or debts, or sum or sums of money now due or owing, or hereafter to become due or owing from me to any person or persons, either with or without interest for the same as aforesaid, or any such sum or sums of money so to be borrowed or taken up at interest as aforesaid, or for any other purpose which my said attorney shall think expedient, for me and in my name to sign, make, indorse, or accept any promissory note or notes, or bill or bills of exchange, and enter into, sign, seal, execute, and deliver any covenant or covenants, agreement or agreements, bond or bonds, or warrant of attorney or warrants of attorney for confessing judgment against me in any Court or Courts in Great Britain; And to mortgage, charge, or otherwise incumber, all or any part or parts of my freehold and leasehold plantations, lands, and tenements, stock, chattels, and real and personal estate and effects whatsoever, in Great Britain; And also if, and when and so soon as my said attorney shall think expedient, for me and on my behalf, to sell and absolutely dispose of all or any of my freehold and leasehold estates, goods, chattels, and effects in Great Britain (whether the same shall have been previously mortgaged or not), together, or in parcels, and either by public auction or private contract, for such price or prices, as to my said attorney shall seem reasonable, and to convey, assign, transfer, or make over the same respectively to the purchaser or purchasers thereof [with power to give credit for the whole or any part of the purchase-money thereof, and to permit the same to remain unpaid for such time and upon such security as my said attorney shall think

XV. To Lease, Charge, and Sell Estates, and Pay Debts, Raise Money by way of Annuity, &c.

And give security for debts.

To borrow monies.

To give bills, bonds, and warrants of attorney, &c., for monies due.

And to mortgage or sell real and personal estate.

XV. To Lease, Charge, and Sell Estates, and Pay Debts, Raise Money by way of Annuity, &c.

proper]; And for all or any of the purposes herein mentioned, for me and in my name, and as my act and deed, to execute and do all such mortgages, conveyances, assurances, and things as shall be required, and as my said attorney shall think proper; and for me and in my name sign and give receipts for all or any the sum or sums of money which shall arise from any such sale or sales as aforesaid, or which shall be so borrowed as aforesaid, by virtue of the powers hereinbefore contained, which receipts shall be sufficient discharges to the persons paying the same, and shall exempt them from all responsibility in respect of seeing to the application thereof; And by, and with, or out of such monies as shall from time to time come to the hands or power of my said attorney, under or by virtue of any of the powers or authorities aforesaid, to pay and discharge, in the first place, all the expenses of preparing, engrossing, and executing these presents, and all other costs, charges, damages, and expenses which my said attorney shall pay, sustain, incur, or become liable to, in or about the execution of the powers vested in or given to him by these presents, or in anywise relating thereunto; And, in the next place, to pay and discharge any debt or debts which is, or are, or shall, or may be due and owing from me, or such of them or such part thereof as my said attorney shall think proper, or to apply the same, or such part thereof as he in his discretion shall think necessary, in or for the keeping down and discharging the interest due or to grow due on any securities given or hereafter to be given by me or by my said attorney by virtue hereof; And also, for such other purposes, and in such other manner, as I shall from time to time, by any writing under my hand, direct or appoint, or otherwise to dispose of the same for my use and benefit as he shall think fit: And whereas I am indebted to [*creditor*], of, &c., in the sum of £——, or thereabouts, for which he has accepted my bond, payable by instalments, and taken certain other securities for the payment of the same: And whereas the arrangement of my affairs might be materially facilitated if a sum of money could be raised by way of mortgage for the payment of the said debt of the said [*creditor*], or any part or parts thereof; Now I do hereby particularly authorise and empower my said attorney to raise, by way of mortgage, any sum of money not exceeding the amount of the sum of £——, for the purpose of paying off

To execute mortgages and conveyances.

To give receipts for purchase-monies and monies borrowed.

Out of monies received, in the first place to pay expenses;

And then to pay debts.

To keep down interest.

Recital that principal is indebted to A.

Power to raise money by way of mortgage to pay debt due to A.

and satisfying the said debt of the said [*creditor*], or such part thereof as may be thought expedient by my said attorney, And thereupon, for me, and in my name, and on my behalf, to execute any mortgage or charge, mortgages, or charges, and any conveyance or assurance, or conveyances or assurances, of all or any part or parts of my estate or effects, real or personal, with such clauses, agreements, conditions, and covenants, to be therein contained, as the mortgagee or mortgagees shall require, for securing the payment of the said annuity or annuities; And I hereby declare, that the receipts of my said attorney, for all or any part of the monies which shall form the consideration of the said mortgages or charges, or any of them, shall be good and complete discharges, to the mortgagee or mortgagees, who shall pay the same, And that he or they shall in no respect be responsible for the application thereof; And generally, for me, and in my name, and on my behalf, to do, perform, execute, and accomplish every other act, deed, matter, and thing whatsoever, which my said attorney shall think necessary or proper to be done in or about or concerning my estates, property, debts, concerns, or engagements, during my absence from England, as fully and effectually as I might or could do if personally present: [*Power to appoint substitutes, and Agreement to ratify, ante*, pp. 913, 914].

XV. To Lease, Charge, and Sell Estates, and Pay Debts, Raise Money by way of Annuity, &c.

Receipts of attorney to be good discharges.

Attorney to perform all other necessary acts respecting property and concerns of constituent.

XVI. *POWER of* Attorney, *by two* Merchants, *being in England, to their* Partner *in the* United States *of* America (*o*), *to act for them in all* Partnership Transactions.

TO ALL PERSONS to whom these presents shall come(*p*) [*first principal*], of, &c., and [*second principal*], of, &c.,

(*o*) Where a power is intended to be used in the United States, the person executing it should attend at the office of the Consulate,

Authentication of power.

(*p*) Stamp, 10*s*.

XVI. By two Merchants to their Partner in America.

send greeting: WHEREAS the said [*principals*], together with [*attorney*], residing at ——, in the United States of America, now carry on in partnership the business of merchants, and the said [*principals*] are desirous of empowering the said [*attorney*] to act for them in all matters relating to the said partnership in the United States aforesaid: NOW THEREFORE THESE PRESENTS WITNESS that the said [*principals*], Do, and each of them Doth, hereby appoint the said [*attorney*] to be the attorney of the said [*principals*], in the United States aforesaid, in the names or name, and as the acts or act of the said [*principals*] as such partners as aforesaid, or of the said [*principals*] or either of them individually or otherwise, to carry on and conduct the said business according to the usual and regular course thereof, and to employ agents and servants to cultivate, manage, and improve all such plantations as may be in the possession or under the management of the said [*principals*], or either of them, in respect of the said partnership business, and for that purpose to purchase cattle, plantation implements, and utensils, and other live and dead stock; And also to make any consignments or dispositions of the produce of such plantations or estates, or any other plantations or estates, the produce whereof shall be at the disposal of the said partnership, and to transact all other affairs and business relating to any plantations or estates in the said island, in which the said partners or any of them shall be interested, either as owners or owner, mortgagees or mortgagee, or otherwise; And also to use and pursue all such ways and means as may be necessary or proper for obtaining possession of any plantations or estates, or of the produce of any plantations or estates, to the possession whereof the said [*principals*] (*q*) or either of them are

Recital.

Testatum.

Appointment of attorney.

To conduct business.

To purchase cattle, &c.

To make consignments.

To obtain possession of plantations.

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where the execution will be duly authenticated; but if this be impracticable, the party should execute the power in the presence of a notary public and two other persons, and the notary will attest it by an act in the usual way. The papers should then be taken to the Consulate Office of the States (at the nearest port), where the necessary authentication of the notary's act may be obtained. If the power is to be used in the United States only (and not, as in this case, in the West Indies also) no stamp will be requisite.

Implied powers of a partner to bind the firm.

(*q*) Partners being agents for each other in all matters within the scope of the partnership (*Lees* v. *Laforest* 14 Beav. 257; *Baird's Case*, L. R. 5 Ch. 733; and see *ante*, p. 242), a power by one trading

XVI. By two Merchants, to their Partner in America.

or is entitled in respect of the said partnership business, either as absolute owners or owner or by virtue of any mortgage, lien, or other security, or otherwise; And upon obtaining possession thereof, to let, sell, mortgage, dispose of, manage, or employ the same, or any part or parts thereof respectively, in such manner as he the said [*attorney*] shall

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partner to another need not comprehend many acts, which it would be necessary to introduce in powers to persons not standing in this relation to each other, as drawing, accepting, or indorsing bills (*Dickenson* v. *Valpy*, 10 B. & C. 138, per *Littledale*, J.; *Pinkney* v. *Hall*, 1 Salk. 126; *Thomason* v. *Frere*, 10 East, 418; *Yorkshire Banking Co.* v. *Beatson*, 4 C. P. D. 211); since these are within the scope of the attorney's power as partner, independently of the authority derived from the instrument. This remark, indeed, applies to some of the acts particularised in this precedent. Thus one partner may purchase goods necessary for carrying on the business of the firm (*Bond* v. *Gibson*, 1 Campb. 185), and sell or pledge partnership property (*Lambert's Case*, Godb. 244; *Gordon* v. *Ellis*, 7 M. & G. 607; *Brownrigg* v. *Rae*, 5 Exch. 489), and mortgage a partnership vessel (*Ex parte Howden*, 2 M. D. & D. 574), and insure it (*Hooper* v. *Lusby*, 4 Camp. 66), and sue for the debts and property of the firm (*Whitehead* v. *Hughes*, 2 Cr. & M. 318, per *Bayley*, B.), and stay proceedings (*Harwood* v. *Edwards*, Gow, Part. 65 n. (*g*)). So one trading partner may borrow money for partnership purposes (*Brown* v. *Kidger*, 3 H. & N. 853), and release or receive and give a receipt for a partnership debt (*Hawkshaw* v. *Parkins*, 2 Swanst. 539; *Anon.*, 12 Mod. 446, 447: *Henderson* v. *Wild*, 2 Campb. 561), and assent to a transfer of it (*Beale* v. *Caddick*, 2 H. & N. 326; and see *Lacy* v. *McNeile*, 4 Dow. & Ry. 7), and hire servants to perform partnership business (*Beckham* v. *Drake*, 9 M. & W. 79), and charter a ship (*Thomas* v. *Clarke*, 2 Stark, 451), and give notice to quit (*Doe* v. *Hulme*, 5 Man. & Ry. 433), and distrain, or appoint a bailiff to do so (see *Robinson* v. *Hofman*, 4 Bing. 562). And as a cheque is in effect an inland bill (Byles, chap. 3), it would seem that a partner having power to draw bills binding the firm might well bind it by drawing cheques in the partnership name on the bankers of the firm: see *Laws* v. *Rand*, 4 Jur. N. S. 74. But in the absence of an express power to do so, one partner cannot bind the firm by contracting for a lease (*Sharp* v. *Milligan*, 22 Beav. 606)—at least, where the partnership term is unfixed; nor by executing a deed (*Harrison* v. *Jackson*, 7 T. R. 207; *Steiglitz* v. *Egginton*, Holt, 141); nor, of course, by making a legal mortgage of realty (see, however, *Juggeewun-das Keeka Shah* v. *Randas Brijbookeen-das*, 2 Moo. Ind. Ap. 487); nor by submission to arbitration (*Stead* v. *Salt*, 3 Bing. 101; see *Hatton* v. *Royle*, 3 H. & N. 500); nor by compromising or settling a debt without payment (Lindley, Part. 277); nor by giving a guarantie (*Brettel* v. *Williams*, 4 Exch. 623), unless perhaps it be necessary for carrying into effect the partnership contract. See further on this subject, *ante*, p. 241 *et seq.*

XVI. By two Merchants, to their Partner in America.

think proper and expedient: And for them the said [*principals*], and in his name, and as his act and deed, to sign, seal, deliver, and execute all such leases or agreements for leases, contracts, or agreements for sale, conveyances, and assurances, with all usual and reasonable covenants therein, on the part of the said [*principal*], of all or any part or parts of the said plantations, messuages, lands, tenements, cattle, stock, crops, produce, implements, and utensils, and other property, estate, and effects, as shall be found necessary or expedient; and to receive and take the purchase-monies or other considerations for such parts thereof as shall be sold, and the rents and profits to accrue and become due for such parts thereof as shall be let, to and for the use of him the said [*principal*], and in his name to sign and give sufficient receipts for the same respectively, or for so much thereof as shall be received; And to examine, adjust, and settle all accounts now depending, and which may hereafter depend between him the said partnership and any other person or persons whomsoever, in the United States; And to demand, recover, and receive of and from all and every the persons and person liable to pay the same, all debts and sums of money, goods, property, and effects, which now are or may hereafter become due and owing or belonging to the said partnership, or to the said [*principals*], or either of them, on account thereof; And upon receipt of any such sum of money to give a sufficient receipt for the same; And also to commence and prosecute any actions, suits, or other proceedings, against any person or persons in respect of any of the matters or things aforesaid, or any other matter or thing relating to the concerns of the said partnership business; and to appear to or defend any actions, suits, or other proceedings to be commenced or prosecuted against the said partnership, and to proceed to judgment and execution, or become nonsuit, or suffer judgment to go by default, in any such actions, suits, or other proceedings, or to compromise the same, as to the said [*attorney*] shall seem most expedient; And also to compound for any debt or debts now due or hereafter to become due to him the said [*principal*], and to accept part thereof in discharge of the whole, if they or either of them shall see occasion so to do; And to submit any dispute or disputes now depending, or which may hereafter arise, touching any of the dealings or transactions on the estates, property, or effects of the said partnership, to arbitration; and

And give discharges.

Also to execute leases and conveyances.

And receive purchase-monies, rents, &c.

To adjust accounts.

And to receive monies.

And give receipts.

To bring or defend actions.

To compound debts.

And submit disputes to arbitration.

XVI. By two Merchants, to their Partner in America.

execute any bond or covenant to abide by and perform the award which shall be made thereon; And also to do, perform, and execute all such other acts, deeds, and things as may be requisite or necessary in or about the premises; And generally to act in the management, conduct, arrangement, and superintendence of all the concerns, affairs, and business whatsoever of the said partnership in the United States, as fully and effectually as the said [*principals*], or either of them, could do if personally present (*r*); And also to substitute or appoint any person or persons to act under or in the place of the said attorneys or attorney in all or any of the matters aforesaid, and such substitute and substitutes at pleasure to remove, and another or others to appoint, the said [*principal*] hereby agreeing to ratify and confirm whatsoever the said [*attorneys*], or either of them, or their, his, or her substitute or substitutes shall do or cause to be done in or about the premises, by virtue of these presents.

General words.

To appoint a substitute.

Agreement to ratify.

IN WITNESS, &c.

XVII. *POWER of* ATTORNEY *by* UNDERWRITERS *at* LIVERPOOL *to act for them in* LONDON (*s*).

KNOW ALL MEN BY THESE PRESENTS (*t*) that [A. B.] and [C. D.], both of Liverpool, in the county of Lancaster, underwriters and co-partners, carrying on their business in Liverpool and in the city of London, under the firm or style of "The —— Marine Insurance Company,"

(*r*) That no reliance is to be placed on these general words, *vide ante*, p. 880. The principal aim in preparing powers of this kind should be to make them as explicit and particular as possible.

(*s*) For a form of agreement for conducting an underwriting business through an agent, see *ante*, sub tit. AGREEMENTS, Vol. I., p. 642.

(*t*) Stamp, 10*s*.

XVII. By Underwriters, to Act in London.

Appointment of attornies.

do, and each of them doth, hereby constitute and appoint [F. G.] and [H. I.], both of Lloyd's, Royal Exchange, London, underwriters, insurance brokers, and co-partners, and each of them to be the attorneys and agents, and attorney and agent, of them the said [A. B.] and [C. D.], in the city of London, in the names or name, and as the acts or act of the said [A. B.] and [C. D.] as such partners as aforesaid, by their said firm or style of "The —— Marine Insurance Company," or of the said [A. B.] and [C. D.], or either of them individually, or otherwise, to carry on and conduct the said business of the said firm, and to employ agents, clerks and servants in and for any of the purposes of the said business, and to dismiss any person or persons now or hereafter to be so employed, and in and for any of the purposes of the said business to make and enter into, and to rescind or vary upon such terms and conditions as the said [*attorneys*], or either of them, shall think fit, or otherwise, any contracts of marine insurance and any contracts relating to any ships, goods or freight, which may be abandoned or given up to, or be claimed by the said firm in their said business, and to enter into and do any other contracts, acts or things, whatsoever incident to the business of underwriters and marine insurers for the said firm in London; And also to examine, adjust and settle all losses, claims, demands, accounts and reckonings between the said firm and any other person or persons, whether as insured, or as salvors or otherwise, in respect to the said business; And to pay or receive (as the case may require) any monies which may appear to be due on the settlement of any such losses, claims, demands, accounts and reckonings; And also to ask, demand and receive, and, if necessary, sue for and recover from whomsoever it may concern all sums of money, ships, goods, property and effects whatsoever, which are or shall be due or owing or belonging to the said firm, or the said [A. B.] and [C. D.], or either of them, on account of their said underwriting business, and on receipt or delivery thereof to give effectual discharges for the same; And also to compound for any debts or sums of money due to or claimed from the said company; And also to commence and prosecute any actions or other proceedings against any person or persons in respect of any of the matters or things aforesaid, or any other matter or thing relating to the conduct, business, contracts, dealings, transactions or affairs

To carry on business in London.

To adjust losses.

To recover property.

To give receipts.

To compound.

To bring and defend actions.

XVII. By Underwriters, to Act in London.

of the said firm, and to appear to and defend any actions or other proceedings commenced, or to be commenced, against the said firm or the said [A. B.] and [C. D.], or either of them, in respect of any of the matters or things aforesaid, or any other matter or thing relating to the conduct, business, contracts, dealings, transactions or affairs of the said company, and either to proceed to judgment and execution, or to become nonsuit, or to suffer judgment to go by default in any such actions or other proceedings as aforesaid, or to confess or compromise the same, or otherwise deal therein as shall seem most expedient; And also to submit any disputes or questions which may arise in relation to the conduct, business, contracts, dealings, transactions or affairs of the said company to arbitration, and for that purpose to execute any bonds or covenants of submission, and for any of the purposes before mentioned to make, underwrite, execute, sign, seal and deliver any contracts, policies, agreements, deeds, assurances, instruments and writings whatsoever; And for any of the above purposes to make, enter into, underwrite, execute and sign any contracts, agreements, policies, deeds, assurances, releases, receipts, instruments, and writings whatsoever, which the said [*attorneys*], or either of them, may think necessary or expedient; And generally to act in the management and conduct of all the affairs and concerns of every kind and description in any manner relating to or connected with the said business of the said firm, and to use and pursue all such ways and means, and make, do and execute all such acts, matters and things as may be requisite or expedient for that purpose, as fully and effectually as the said [A. B.] and [C. D.], or either of them, could or might do if personally present; And also to substitute any person or persons to act under, or in the place of, the said attorneys or attorney in all or any of the matters aforesaid, and every such substitution to revoke, the said [A. B.] and [C. D.], and each of them, hereby agreeing to ratify and confirm whatsoever the said attorney or attorneys, or their or his substitutes or substitute, shall lawfully do, or cause to be done, in or about the premises by virtue or according to the intent and meaning of these presents.

To submit to arbitration.

To execute deeds, &c.

General words.

Power to substitute.

Agreement to ratify.

In witness, &c.

XVIII. *POWER of* Attorney *empowering a* Creditor *to receive the* Rents *of* Freehold Houses, *by way of* Security *for a loan.*

Parties.

THIS INDENTURE (*u*), made the —— day of ——, Between [*principal*], of &c., of the one part; and [*creditor*] of &c., of the other part:

Recitals: of principal's title.

Whereas the said [*principal*] is seised of, or entitled to two several messuages, situate in —— Street, in the parish of ——, in the county of ——, being Nos. —— and —— in the said street, for one estate in fee simple in possession free from incumbrances, which said several messuages have been let by the said [*principal*] to the several persons, and at the several yearly rents following, that is to say, No. ——, in —— Street aforesaid, to [A. B.], as tenant from year to year, at the yearly rent of £——; and No. ——, in —— Street aforesaid, to [C. D.], by an indenture of lease, dated the —— day of ——, 18—, for twenty-one years from the —— day of ——, 18—, at the yearly rent of £——: And whereas the said [*creditor*] has agreed to lend to the said [*principal*] the sum of £——, at interest, on the security of the rents of the said two several messuages, to be received by him the said [*creditor*] as hereinafter expressed:

Testatum.

Now these presents witness, that, in pursuance of the said recited agreement, and in consideration, &c., the

Appointment of attorney.

said [*principal*] hereby irrevocably appoints the said [*creditor*], his executors or administrators, the attorney and attornies of him the said [*principal*], for him and in his name or otherwise to receive and recover from the tenants and occupiers of

To receive the rents.

the said two messuages respectively, All those several yearly rents of £—— and £——, so respectively reserved and made payable to the said [*principal*] out of, or in respect of, the same messuages; And all monies now due, or hereafter to become due, in respect of the same rents or either of them,

To give receipts.

and to give effectual discharges for the same, exonerating the persons paying such rents respectively from all responsibility in respect of the application thereof; and, for the purposes

To distrain.

aforesaid, to levy and make such distresses and entries upon the said premises, and to do and execute all such other acts,

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(*u*) Stamp, *ad valorem*, as a mortgage in respect of the amount of the advance: see *ante*, Vol. III., p. 988.

matters and things as may be expedient for compelling and enforcing payment of the said rents, and to appoint, from time to time, a substitute or substitutes for all or any of the purposes aforesaid, and from time to time every such substitution at pleasure to revoke; the said [*principal*] hereby agreeing to ratify and confirm whatsoever the attorney or attornies, or his or their substitute or substitutes, shall lawfully do, or cause to be done, in or about the premises: AND IT IS HEREBY DECLARED AND AGREED, that the said [*creditor*], his executors, administrators and assigns, shall stand possessed of the said rents and monies so to be received by him and them as aforesaid, UPON TRUST thereout, in the first place, to pay the rents and other outgoings which shall, from time to time, be payable in respect of the said premises, in case default shall be made by the said [*principal*] in paying the rents and performing the covenants to be by the said [*principal*] respectively paid and performed in pursuance of his covenant hereinafter contained; And, in the next place, UPON TRUST, from time to time to retain to and reimburse himself and themselves the said sum of £—— advanced by the said [*creditor*] to the said [*principal*] as aforesaid, with interest thereon at the rate of —— *per cent. per annum* from the date hereof to the time or respective times of the re-payment of the same; And after full payment and satisfaction of the said principal and interest monies, and of all costs and expenses attending the execution of this present trust, UPON TRUST, to pay over unto the said [*principal*], his executors, administrators, or assigns, any monies which shall remain in the hands of the said [*creditor*], his executors, administrators, or assigns, unapplied to the purposes aforesaid. AND IT IS HEREBY DECLARED AND AGREED, that when the said principal and interest monies, costs and expenses shall have been fully satisfied, the said [*creditor*], his executors or administrators, on the request of the said [*principal*], his executors, administrators, or assigns, shall deliver unto him or them this present power of attorney to be cancelled. And the said [*principal*] hereby covenants with the said [*creditor*] to pay unto the said [*creditor*], his executors or administrators, or assigns, on the —— day of —— next, the sum of £——, with interest for the same in the meantime at the rate of —— per cent. per annum: And also, that he the said [*principal*], his executors or administrators, so long as any principal

XVIII. **Power of Attorney to Receive Leasehold Rents.**

To substitute.

Agreement to ratify.

Declaration of trusts of monies.

To pay rents and outgoings.

To retain mortgage-monies and trust-expenses.

To pay over balance.

Covenants by principal to repay mortgage-monies,

XVIII. Power of Attorney to Receive Leasehold Rents.

monies shall remain owing, by virtue of these presents, will pay to the said [*creditor*], his executors, administrators, or assigns, interest for the same at the rate aforesaid, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year; And that the said [*principal*], his executors or administrators, will not prevent or hinder the said [*creditor*], his executors or administrators, from receiving the rents and monies so to be received by him or them as aforesaid, but will, on the request of the said [*creditor*], his executors or administrators, and at the cost of him the said [*principal*], his executors or administrators, make, do and execute all such further acts, deeds and authorities as shall be requisite for authorising and empowering the said [*creditor*], his executors or administrators, to receive the said rents and monies, so long as any part of the principal sum intended to be hereby secured, or of the interest thereon, shall remain owing to him or them, as by the said [*creditor*], his executors or administrators, shall be reasonably required.

And not to hinder attorney from receiving rents.

For further assurance.

IN WITNESS, &c.

XIX. *POWER of* ATTORNEY *from a* MANUFACTURER *in* ENGLAND *to stop in transitu Goods consigned to Merchants in Bombay of whom one has become Bankrupt* (*v*).

TO ALL TO WHOM THESE PRESENTS SHALL COME (*x*), I [A. B.], of, &c., cotton spinner and manufacturer, send

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(*v*) As to the right of a principal to stop *in transitu* goods consigned by him to a factor before they come into the possession of the latter: see *Kinlock* v. *Craig*, 3 T. R. 783; *Feise* v. *Wray*, 3 East, 93; *Patten* v. *Thompson*, 5 M. & S. 350; *Whitehead* v. *Anderson*, 9 M. & W. 532. In *Bird* v. *Brown*, 4 Exch. 786, Illins, a merchant

(*x*) Stamp, 10*s*.

XIX. To Stop in Transitu.

greeting: WHEREAS I have been for many years in the habit of consigning shirting and other kinds of cotton goods to [C. D.] and [E. F.], merchants, of Bombay, carrying on business under the firm of D. & Co.: AND WHEREAS [G. H.], the said [C. D.] and [I. K.], lately carrying on business as —— in ——, under the firm of H. D. & K., the London correspondents of D. & Co., received from time to time the proceeds of the sales of the said goods from the said firm of D. & Co., and from time to time accounted to me for such proceeds by accepting and paying my bills upon them for the amount: AND WHEREAS I have lately consigned to the said firm of D. & Co. at Bombay the various cases of goods marked with the letters and figures and carried by the ships specified in the schedule hereunto annexed, and some of which goods are supposed to have come into the hands of the said firm of D. & Co., and the residue of the said goods to be still on their passage to the said firm: AND WHEREAS adjudication of bankruptcy has been made against the said firm of H. D. & K., and their names appeared in the list of bankrupts in the London Gazette of the —— day of ——, 18—, and in consequence of the bankruptcy of the said [C. D.] I am desirous that the said goods or such of them as are not in the control of the said firm of D. & Co. should be taken possession of and sold on my account before they come

Recitals: of course of business;

of consignment of goods;

of bankruptcy of firm;

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in New York, consigned a cargo to two Liverpool merchants, against whom, on the 8th of May, a fiat issued. During the continuance of the transit, Brown gave notice to the master and consignees of a claim to stop the goods *in transitu* on behalf of Illins. Brown was not Illin's general agent, nor had he received his authority to make the stoppage. On the 11th of May, the official assignee demanded the cargo of the master and consignees, who refused, and delivered it to Brown. On the next day the assignees demanded the cargo from Brown, who refused, claiming under the stoppage. On the 13th of May, Hubback, having received from Illins a power of attorney, dated the 28th of April, to stop the goods *in transitu*, adopted and confirmed the previous stoppage by Brown, and Illins afterwards adopted and ratified all that had been done by him and Hubback. Trover by the assignees against Brown. Held, first, that there could be no valid stoppage after the demand by the official assignee on the 11th of May and the subsequent delivery; secondly, that the ratification, after the transitus was ended, could not alter retrospectively the ownership of the goods, which had already vested in the plaintiffs.

See further as to stoppage *in transitu*, Robson on Bankruptcy, p. 447, *et seq.*

XIX. To Stop in Transitu.

into their possession or under their control, and that such of the said goods as cannot be so taken possession of should be sold under the joint direction of the said firm of D. & Co., and any attornies or attorney hereinafter appointed, and that the proceeds thereof should be remitted to me or to my account in the manner hereinafter mentioned: NOW THESE PRESENTS WITNESS, that I the said [A. B.] do hereby appoint [L. M.], [N. O.], and [P. Q.], of Bombay aforesaid, merchants, carrying on business under the firm of M. & Co., or any one or more of them, to be my attornies and attorney to ask, demand, sue for and recover and take possession of and from the said firm of D. & Co., and of and from all and every other the persons or person who shall have possession of or be entrusted to deliver the same, all and singular the said cases and goods specified in the said schedule hereunto annexed, and all other goods whatsoever which have been consigned by me to the said firm of D. & Co., and which have not been previously disposed of by the same firm; And on delivery thereof, or any part thereof respectively, to give and execute receipts and other discharges for the same respectively; And on non-delivery thereof or any part thereof respectively to commence and prosecute any action, suit or other proceedings for recovering and compelling the delivery thereof respectively, and also to sell and dispose of such of the said goods as shall come into their or his possession to any person or persons upon such terms as my said attornies or attorney shall think proper; And also to sell and dispose of, or in case they or he shall think proper, to concur with the said firm of D. & Co. in selling or disposing of, or in fulfilling any contract concerning, such of the said goods as shall be in the possession or power of the said firm of D. & Co. (*y*), and also to ask, demand, sue for, recover and receive of and from the said firm of D. & Co. the monies produced by any such sale or contract, and also all other monies whatsoever in the hands of the same firm belonging to me or which they shall be liable to pay to me

Appointment of attornies.

To take possession of scheduled goods.

To give receipts.

To bring actions.

To sell.

To recover proceeds.

(*y*) If made before the expiration of the period of credit, such a sale (the goods not being perishable) may expose the principal to an action at the suit of the bankrupt's assignees: *Bloxam* v. *Sanders*, 4 B. & C. 949, per *Bayley*, J.; and see the note to *Lickbarrow* v. *Mason*, 1 Smith L. C.

XIX. To Stop in Transitu.

or according to my direction; And to remit all monies received by any of the means aforesaid to the firm of M. & Co., of Broad Street Buildings, in the city of London, to be there placed to my credit, or to dispose of such monies in such other manner as I shall from time to time direct; And also to adjust, settle, compound, and compromise with the said firm of D. & Co., or any other person or persons whomsoever, all accounts, reckonings, transactions, matters, and things whatsoever relating to the said goods and monies; And for all or any of the purposes aforesaid to use my name, and generally to execute and do any deed, matter, or thing whatsoever relating to the premises as fully and effectually as I might or could do if personally present; And whatsoever the said [*attornies*], or any one or more of them, shall do or cause to be done in or about the premises by virtue of these presents, I hereby covenant and agree with and to the said [*attornies*], and each of them, to ratify and confirm.

To remit monies.

To adjust accounts.

General words.

Covenant to ratify.

In witness, &c.

The Schedule above referred to.

XX. *POWER of* Attorney *to* receive *the* Freight *of a* Ship.

KNOW ALL MEN by these presents (*z*), That I [*master*], of, &c., master and part owner of the ship or vessel called the ——, of the burthen of —— tons, or thereabouts, Do hereby appoint [*attorney*], of, &c., to be my attorney, for me and in my name, and for my use and the use of the other part owners of the said ship, to demand, receive, and recover of and from [*debtors*], of, &c., merchants, and any of them,

Appointment of attorney.

To receive freight.

(*z*) Stamp, 10*s*.

XX. To receive Freight.

and all other persons whom it shall or may concern, all and every sums and sum of money which now are or is due, owing and payable by and from them or any of them, as freight or otherwise, for or in respect of any goods or merchandise imported in the said ship in her late voyage from —— to ——, by virtue of a charter-party dated the —— day of —— last, or otherwise howsoever; and upon receipt of all or any such sums or sum of money to give sufficient receipts and discharges for the same; I hereby confirming and agreeing to confirm whatsoever my said attorney shall do in or about the premises by virtue of these presents.

To give receipts.

IN WITNESS, &c.

XXI. *POWER of* ATTORNEY *from the* OWNER *of a* SHIP *to act for him in* ALL MATTERS *relating thereto.*

TO ALL TO WHOM THESE PRESENTS SHALL COME (*z*), I, [*principal*], of, &c., merchant and shipbroker, send greeting: WHEREAS I am the sole registered owner of the screw steamer called the ——, of Liverpool, now about to proceed on a voyage to Australia, and I am desirous of appointing [C. D.], of Liverpool aforesaid, merchant, who is about to proceed in the same vessel as her supercargo, [E. F.], of Sydney, merchant, [G. H.], of Melbourne, merchant, and [I. K.], at present, of Liverpool, merchant, but about to proceed to Australia, my attornies, for the purposes hereinafter expressed, to act for me in all matters relating to the said vessel: NOW THEREFORE THESE PRESENTS WITNESS, that I, the said [*principal*], do hereby appoint the said

Recital of ownership of ship, &c.

Testatum.

Appointment of attornies.

(*z*) Stamp, 10*s.*

[*attorney*], and any one or more of them, to be my attornies and attorney for me and in my name, or in their or his own names or name, or otherwise as to them or him may appear expedient, to sail, navigate, and employ, or negotiate for the charter, freight, hire, and employment of the said vessel for such time or times, for such voyages, and on such terms, as they or he may think fit, and for that purpose to make, sign, and execute all such charter-parties, bills of lading, and other documents as may be by them or him deemed necessary or expedient; And also for me and in my name and for my use to demand, receive, sue for, and recover all and every sums and sum of money which shall or may be due and owing by and from the charterers of the said vessel or any of them, or any other persons or person, as freight or otherwise, for or in respect of any goods or merchandise shipped on board of the said vessel by virtue of any charter-party or engagement now or hereafter to be entered into, and upon receipt of all or any such sums or sum of money to give sufficient receipts or a sufficient receipt for the same; And also for me and in my name to sign and give any bottomry bond or instrument of hypothecation on the said vessel or her cargo; And also for me and in my name to sell and dispose of, either absolutely or by way of mortgage, as they or he shall think proper, the said vessel or any share or shares thereof, with the appurtenances, and all or any part or parts of the freight, hire, passage-money, and earnings of the said vessel, on any one or more voyage or voyages of the same vessel (*a*); and in order

XXI. **By a Shipowner to act generally.**

To manage the ship.

To execute charter-parties.

To recover freight.

To give receipts.

To give bottomry bonds.

To sell or mortgage.

(*a*) In *Willis* v. *Palmer*, 7 C. B. N. S. 340; 6 Jur. N. S. 732, the power (of which the above is nearly a transcript) did not contain any express authority to mortgage freight, hire, passage-money, and earnings. The attorney mortgaged the passage-money, &c., of the ship on her intended voyage from Port Jackson to Liverpool. After the sailing he received part of the passage-money by bills on England, which were paid, and the money received by the principals' assignees before the arrival in Liverpool. The mortgagees sued the assignees for the amount. It was held by the Court of Common Pleas, that the attorney was authorised to assign the passage-money, that an immediate right to it passed to the mortgagees before they took possession of the ship, and consequently that they were entitled to recover. But in *Lyall* v. *Hicks*, 27 Beav. 616, where the shipowner gave the captain written instructions, by which, in case of emergency, he was authorised to apply to the plaintiffs, "who would give him any assistance required," *Romilly*, M.R., held that this did not empower the captain to contract with the plaintiffs to give them

XXI. **By a Shipowner to act generally.**

to effectuate such sales and mortgages, or any of them, to enter into, execute, and do all such agreements, instruments, matters, and things as may be necessary or expedient; And also for me and in my name or otherwise, from time to time to purchase as cargo for the said vessel any goods or merchandize, and to make any consignments or dispositions of every or any part thereof, and to transact all other business in anywise relating thereto, as to my said attornies or attorney may seem expedient; And also for me and in my name, or in their or his own names or name, to draw, accept or indorse any bills of exchange or promissory notes in payment or satisfaction of the said goods and merchandize, or any part thereof, or on account of any debt or claim due or payable to or from me in respect of the said vessel; And also for me and in my name to remove the present or any future master of the said vessel, or any engineer, officer or seaman, or other person on board the same, and from time to time to appoint any other master, engineer or officer thereto, or to engage any other seamen or other persons for service on board the said vessel, upon such terms and conditions as my said attornies or attorney shall think proper; And also to commence and prosecute, or concur and join in, any actions, suits or other proceedings at law or in equity or otherwise, in my name or otherwise, either alone or jointly with any other person or persons against any person or persons in respect of any of the matters or things aforesaid, and to appear to and defend any actions, suits or other proceedings to be commenced or prosecuted against the said vessel, or against myself in respect thereof, either alone or jointly with any other person or persons in relation to any of the matters or things aforesaid; And to proceed to judgment and execution, or become nonsuit or suffer judgment to go by default, or confess judgment in any such actions, suits or other proceedings, or to compromise the same, as to the said attornies or attorney shall seem expedient; And also if my said attornies or attorney shall deem it expedient so to do, to compound for any sum or sums of money, or other debt or liability owing, or which may be owing to or from me in respect of the said vessel, or the freight or earnings thereof, or

To buy cargoes.

To make consignments.

To draw, accept or indorse bills.

To remove the master, &c.

And appoint others.

To take legal proceedings.

To appear to and defend actions.

To compound for debts owing in respect of the ship.

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a lien upon the freight to be earned by a voyage, which the money advanced by them enabled the ship to perform.

in anywise relating thereto, and to accept part of such debt or liability so owing to me as last aforesaid in discharge of the whole, or to accept a security by way of mortgage, charge, bond, covenant, bill of exchange or otherwise for the whole or for part thereof in discharge of the whole; And to submit any dispute or disputes now pending or which may hereafter arise touching any of the matters and things aforesaid to arbitration, and to execute any bond, covenant or contract to regulate the terms of any such reference, and to abide by and perform the award or awards which shall be made thereon; And to enter into, conduct and conclude any other negotiation, contract, compromise or arrangement in relation to any of the matters or things aforesaid which to my said attornies or any one or more of them in their or his absolute discretion shall seem proper or expedient: And also in my name or otherwise to do, perform and execute all such other acts, deeds, instruments, matters and things whatsoever in relation to the premises as to my said attornies or attorney shall seem proper or expedient, and generally to act in the management, arrangement and settlement of all the affairs, matters and things whatsoever relating to the said vessel and the transactions hereinbefore mentioned or referred to as my said attornies or attorney shall in their or his absolute discretion think expedient, and as fully and effectually in all respects as I could have done if personally present [*Power to appoint substitute and agreement to ratify, supra*, pp. 913, 914. *Attorney's indemnity clause, supra*, p. 914].

XXI. **By a Shipowner to act generally.**

To submit to arbitration.

General words.

IN WITNESS, &c.

XXII. *POWER of* ATTORNEY *appointing Two persons jointly and severally as* SUBSTITUTES, *by virtue of an* AUTHORITY *in a Power of Attorney.*

TO ALL TO WHOM THESE PRESENTS SHALL COME (*b*), [*principal*], of, &c., sends greeting: WHEREAS

Recital of

(*b*) Stamp, 10*s*.

XXII. Appointment of Substitutes under a Power of Attorney.

power of attorney, with power to appoint substitutes.

Testatum.

[*former principal*], of, &c. (then in London), duly made and executed under his hand and seal a certain deed-poll or power of attorney, dated the —— day of ——, whereby the said [*former principal*] appointed the said [*present principal*] his attorney, for him and in his name [*recite power, including the authority to appoint a substitute*]: NOW THESE PRESENTS WITNESS, that the said [*present principal*], by virtue and in execution of the authority in that behalf contained in the said power of attorney, and of all other authorities him thereunto enabling, doth hereby appoint [*two attornies*], of, &c., and each of them, to be the attornies and

Appointment of substitutes.

attorney, jointly and separately, of the said [*former principal*], for him and in his name, or in the name of the said [*present principal*], to execute and perform all and every the authorities, matters, and things mentioned and contained in the said deed-poll or power of attorney, in the same manner, and as fully and effectually, as he the said [*former principal*], or as the said [*present principal*] might or could have done if personally present, and as they the said [*attornies*], or either of them, might or could have done if they had been appointed the attornies jointly and severally of the said [*former principal*], in and by the said deed-poll or power of attorney,

Agreement to ratify.

in the stead of the said [*present principal*], the said [*present principal*] hereby confirming and agreeing to confirm whatsoever the said [*attornies*] jointly, or either of them separately, shall do or cause to be done in and about the premises by virtue of these presents.

In witness, &c.

XXIII. *DEED of* Revocation *of a* Power *of* Attorney (*c*).

Recital of powers.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*d*), [A. B.], of, &c., sends greeting: Whereas, by a

(*c*) Where the letter of attorney is under seal, the revoking in-

(*d*) Stamp, 10*s*.

XXIII. Revocation of Power of Attorney.

certain deed-poll or power of attorney under my hand and seal, dated the —— day of ——, I appointed [C. D.], of, &c., my attorney, for me and in my name (*recite power*): NOW KNOW YE, that I, the said [*principal*], do by these presents absolutely revoke the said deed-poll or power of attorney, and every power and authority expressed to be thereby given: PROVIDED NEVERTHELESS, that nothing herein contained shall impeach or invalidate any act which the said [*attorney*] shall do or cause to be done by virtue of any power or authority expressed to be given by the said power of attorney, before the revocation thereof by these presents shall have been made known to the said [*attorney*].

Testatum.

Revocation of power.

IN WITNESS, &c.

XXIV. *DECLARATION to accompany a* POWER OF ATTORNEY *to* RECOVER *a* DEBT *in a* BRITISH COLONY *or* DEPENDENCY.

I [A. B.], of Cheapside, in the city of London, clerk to [*creditor*], of the same place, linen merchant, do solemnly and

Declaration accompany power.

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strument should also be under seal. But this, as we have seen, p. 894, *supra*, is not absolutely necessary. If an interval must necessarily elapse before the revocation is communicated to the attorney (which will happen if he reside at a distance), it may be well, though perhaps not strictly necessary (see *ante*, p. 901) to add a qualification to the effect in the text.

The execution of a new power of attorney would, as we have seen (p. 900), be a revocation of any previously existing power relating to the same extent to the same matters, unless, indeed, an intention could be collected that the attornies named in both powers should act conjunctively, which intention would, it is conceived, require to be specially indicated. In *Pariente* v. *Lubbock*, 20 Beav. 594, *Romilly*, M.R., said, "it is a perfectly new proposition to me to hear that the principal abroad might not, if he thought fit, constitute, as between himself and his agent here, some other person to be a sort of a second principal, in order to give complete directions to the agent in this country as to what he should do with the property." Where the object of the instrument is simply to revoke an existing power, it may be framed as above.

XXIV. Declaration as to Debt, to accompany Power of Attorney.

sincerely declare that the several goods and articles mentioned in the bill or account hereunto annexed, signed by the said [*creditor*], were, to my knowledge, supplied and furnished by the said [*creditor*] to [*debtor*], now of Kingston, in the island of Jamaica, but late of the city of London, esquire, by the order (*e*), and at the request of the said [*debtor*]; and also that I verily believe that the sum of £——, the amount of the said bill or account, is now justly due and owing from the said [*debtor*] to the said [*creditor*]. And I further solemnly and sincerely declare, that on the —— day of ——, 18—, I the said [*declarant*] and [*the other attesting witness*], of, &c., were present together, and did see the said [*creditor*] duly sign, seal, and as his act and deed deliver, the power of attorney dated the —— day of ——, 18—, hereunto also annexed, and that the name [*creditor's signature*] appearing to

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Variations in declaration, according to the nature of the debt.

(*e*) Sometimes the witness cannot speak to the fact of the goods having been supplied, but merely states that the account agrees with the books, thus:—

"That the bill or account hereunto annexed, signed by the said [*creditor*], is a just and true transcript or copy of a bill or account as appearing in the books of the said [*creditor*]."

If the account has been delivered to the debtor by the person making the declaration, add—

"And I further declare that I did, on the —— day of ——, deliver a copy of the said account to [*debtor*] at the house of ——, in the said city of London, and he the said [*debtor*] thereupon promised that he would call on the said [*creditor*] and pay the same before he left London," (*or otherwise, as the case may be*).

This declaration should correspond as nearly as can be with the evidence which would be requisite in an action brought in a court of competent jurisdiction in England for the recovery of the debt.

Where a power of attorney is transmitted to the East Indies to recover a debt due to a person resident in London, it should be accompanied by a declaration by the creditor, similar to the affidavit made to hold to bail, and verifying an annexed account; also a declaration by some third person, as in the present case: which declarations should be taken before the mayor, whose signature to the respective jurats should be certified by a notary public, and then one of the Under-Secretaries of State for India certifies that the notary public who has signed the act is a public notary practising in London. For these forms, see Chitty's Commercial Law, Vol. IV. pp. 30—33.

XXIV. Declaration as to Debt, to accompan Power of Attorney.

be thereunto subscribed is of the proper handwriting of the said [*creditor*], and that the names [A. B.] and [C. D.], thereunto also subscribed as witnesses attesting the execution thereof, are of the respective proper handwritings of me the said [*declarant*] and the said [*other witness* (*f*)]. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared at the Guildhall, London, the —— day of ——, 18—, before me,

X. Y. [*Mayor*].

XXV. *DECLARATION of* ATTESTING WITNESS *to a* POWER *of* ATTORNEY.

Declaration.

I, [A. B.], of, &c., do solemnly and sincerely declare, that on the —— day of ——, 18—, I and [*other witness*], of, &c., were present together and did see [*principal*], of, &c., sign, seal, and as his act and deed deliver, the power of attorney hereunto annexed, and that the name [*principal's signature*] appearing to be subscribed thereto, as the name of the party executing the same, is of the handwriting of the said [*principal*], and that the names [A. B.] and [C. D.] respectively appearing to be subscribed thereto, as the names of the attesting witnesses to the execution of the said power of attorney, are of the respective handwritings of me the said [*declarant*] and the said [*other witness*]. And I make this solemn declaration conscientiously believing the same to be

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(*f*) In order to avoid the necessity of having more than one declaration, the person speaking to the fact that the debt being due should be one of the attesting witnesses to the power of attorney and should make the declaration of its execution.

XXV. Declaration of Witness.

true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared at ——, in the City of ——, [*or* Borough of ——, in the County of ——], this —— day of ——, 18—, before me [X. Y.], Mayor [*or* Notary Public].

XXVI. *CERTIFICATE of* MAYOR *or* NOTARY VERIFYING *preceding* DECLARATION (*g*).

Certificate.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*h*), I, [*mayor*], Mayor of the City of ——, [*or* Borough of ——, in the County of ——, *or* Notary Public by royal authority, duly admitted and sworn of ——, in the County of ——], in pursuance of [an Act of Parliament, passed in the fifth year of the reign of his late Majesty King George the Second, intituled "An Act for the more easy Recovery of Debts in his Majesty's Plantations and Colonies in America," (*i*) and of]

(*g*) The trouble and expense of a declaration and mayor's certificate may be saved by executing the power of attorney in the presence of a person who is about to proceed to the island in which the instrument is to be used, and who can make the necessary deposition there; but where the declaration embraces other objects, which make the certificate, &c., necessary at all events, nothing is gained by this expedient.

It is said that a notary public, by the law of nations, has credit everywhere, *Hutcheon* v. *Mannington*, 6 Ves. 824; and in this respect stat. 15 & 16 Vict. c. 86, s. 22, only recognises the general law of the land; *Cole* v. *Sherard*, 11 Exch. 484, per *Parke*, B. See, however, *In re Earl's Trust*, 4 K. & J. 300, and *supra*, p. 14. In *Meek* v. *Ward*, 10 Hare, App. i., a notary certified that an affidavit was sworn before him on a certain date, but did not express the place at which it was sworn: the affidavit was, nevertheless, ordered to be filed.

(*h*) By the Stamp Act, 1870, a notarial act of any kind whatsoever (except a protest of a bill of exchange, or promissory note, or any notarial instrument to be expeded and recorded in any register of Sasines) is charged with a duty of 1*s.*, to be denoted by an adhesive stamp: see Schedule and sect. 116.

Stat. 5 Geo. 2, c. 7.

(*i*) This Act provides, that from and after 29th September, 1732,

the Statutory Declarations Act, 1835, do hereby certify, that, on the day of the date hereof, personally came and appeared

XXVI. Certificate of Mayor or Notary.

in any action or suit then depending, or thereafter to be brought in any Court of law or equity in any of the British plantations in America, for or relating to any debt or account, wherein any person residing in Great Britain shall be a party, it shall be lawful for the plaintiff or defendant, and also for any witness to be examined or made use of in such action or suit, to verify or prove any matter or thing by affidavit or affidavits in writing upon oath, or in case the person making such affidavit be one of the people called Quakers, then upon his or her solemn affirmation, made *before any mayor or other chief magistrate of the city, borough, or town corporate in Great Britain*, where, or near to which, the person making such affidavit or affirmation shall reside, *and certified and transmitted under the common seal of such city, borough, or town corporate, or the seal of the office of such mayor or other chief magistrate;* and every affidavit or affirmation so made, certified, and transmitted shall, in all such actions and suits, be allowed to be of the same force and effect, as if the person or persons making the same upon oath or solemn affirmation as aforesaid had appeared and sworn or affirmed the matters contained in such affidavit or affirmation *vivâ voce* in open court, or upon a commission issued for the examination of witnesses or of any party in any such action or suit respectively, *provided that in every such affidavit and affirmation there shall be expressed the addition of the party making such affidavit or affirmation and the particular place of his or her abode.*

In suits depending in plantations to which any person residing in Great Britain is a party, proof to be received by affidavit made before any mayor, &c.

And to be of the same force as if the witness deposed *vivâ voce.*

Sect. 2, Enables the king to prove his debts in like manner.

Sect. 3, Subjects persons swearing or affirming falsely to the penalties of perjury.

Sect. 4, Makes liable houses, lands, and other real estates in the plantations, to simple contract debts.

The Act of 5 & 6 Will. 4, c. 62, contains the following sections:

Stat. 5 & 6 Will. 4, c. 62.

15. "And whereas an Act was passed in the fifth year of the reign of his late Majesty King George the Second, intituled 'An Act for the more easy Recovery of Debts in his Majesty's Plantations and Colonies in America:' And whereas another Act was passed in the fifty-fourth year of the reign of his late Majesty King George the Third, intituled 'An act for the more easy recovery of Debts in his Majesty's Colony of New South Wales:' And whereas it is expedient that in future a declaration should be substituted in lieu of the affidavit on oath authorised and required by the said recited Acts, be it therefore enacted, that from and after the commencement of this Act, in any action or suit then depending or thereafter to be brought or intended to be brought in any Court of law or equity within any of the territories, plantations, colonies, or dependencies abroad, being within and part of his Majesty's dominions, for or relating to any debt or account wherein any person residing in Great Britain or Ireland shall be a party, or for or relating to any lands, tenements, or hereditaments, or other property situate, lying, and being in the said places respectively, it shall and may be lawful to and for the plaintiff or defendant,

Declarations substituted for oaths and affirmations previously required.

XXVI. Certificate of Mayor or Notary.

before me [A. B.], of, &c., the person named in the declaration hereunto annexed, being a person well known and of good credit, and by declaration, which the said [A. B.] then made before me, did solemnly and sincerely declare and testify to be true the several matters and things mentioned and contained in the said annexed declaration.

In faith and testimony whereof, I the said Mayor have caused the seal of the office of Mayoralty of the said City [*or* Borough] of ——, [*or* my notarial seal of office], to be hereunto put and affixed, and the power of attorney mentioned in the said declaration to be hereunto annexed. Dated at the City [*or* Borough] of —— aforesaid, the —— day of ——, 18—.

[*Mayoralty or Notarial Seal*]

X. Y., Mayor of ——.

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and also to and for any witness to be examined or made use of in such action or suit, to verify or prove any matter or thing relating thereto by solemn declaration or declarations in writing, in the form in the schedule hereunto annexed, made before any justice of the peace, notary public, or other officer now by law authorised to administer an oath, and certified and transmitted under the signature and seal of any such justice, notary public duly admitted and practising, or other officer, which declaration, and every declaration relative to such matter or thing as aforesaid, in any foreign kingdom or state, or to the voyage of any ship or vessel, every such justice of the peace, notary public, or other officer, shall be and he is hereby authorised and empowered to administer or receive; and every declaration so made, certified, and transmitted, shall in all such actions and suits be allowed to be of the same force and effect as if the person or persons making the same had appeared and sworn or affirmed the matters contained in such declaration *vivâ voce* in open court, or upon a commission issued for the examination of witnesses or of any party in such action or suit respectively; provided that in every such declaration there shall be expressed the addition of the party making such declaration, and the particular place of his or her abode."

Proof by declaration in suits on behalf of his Majesty.

Sect. 17. "And be it further enacted, that in all suits now pending or hereafter to be brought in any Court of law or equity, by or on behalf of his Majesty, his heirs and successors, in any of his said Majesty's territories, plantations, colonies, possessions, or dependencies, for or relating to any debt or account, that his Majesty, his heirs and successors, shall and may prove his and their debts and accounts, and examine his or their witness or witnesses by declaration, in like manner as any subject or subjects is or are empowered or may do by this present Act."

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